

S 631 IS

107th CONGRESS

1st Session

S. 631

To provide for pension reform, and for other purposes.

IN THE SENATE OF THE UNITED STATES

March 27, 2001

Mr. VOINOVICH introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide for pension reform, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCES; TABLE OF CONTENTS.

(a) SHORT TITLE- This Act may be cited as the `Comprehensive Retirement Security and Pension Reform Act of 2001'.

(b) AMENDMENT OF 1986 CODE- Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS- The table of contents of this Act is as follows:

Sec. 1. Short title; references; table of contents.

TITLE I--INDIVIDUAL RETIREMENT ACCOUNT PROVISIONS

Sec. 101. Modification of IRA contribution limits.

TITLE II--EXPANDING COVERAGE

Sec. 201. Increase in benefit and contribution limits.

Sec. 202. Plan loans for subchapter S owners, partners, and sole proprietors.

Sec. 203. Modification of top-heavy rules.

Sec. 204. Elective deferrals not taken into account for purposes of deduction limits.

Sec. 205. Repeal of coordination requirements for deferred compensation plans of State and local governments and tax-exempt organizations.

Sec. 206. Elimination of user fee for requests to IRS regarding pension plans.

Sec. 207. Deduction limits.

Sec. 208. Option to treat elective deferrals as after-tax contributions.

### TITLE III--ENHANCING FAIRNESS FOR WOMEN

Sec. 301. Catch-Up contributions for individuals age 50 or over.

Sec. 302. Equitable treatment for contributions of employees to defined contribution plans.

Sec. 303. Faster vesting of certain employer matching contributions.

Sec. 304. Simplify and update the minimum distribution rules.

Sec. 305. Clarification of tax treatment of division of section 457 plan benefits upon divorce.

Sec. 306. Modification of safe harbor relief for hardship withdrawals from cash or deferred arrangements.

### TITLE IV--INCREASING PORTABILITY FOR PARTICIPANTS

Sec. 401. Rollovers allowed among various types of plans.

Sec. 402. Rollovers of IRAs into workplace retirement plans.

Sec. 403. Rollovers of after-tax contributions.

Sec. 404. Hardship exception to 60-day rule.

Sec. 405. Treatment of forms of distribution.

Sec. 406. Rationalization of restrictions on distributions.

Sec. 407. Purchase of service credit in governmental defined benefit plans.

Sec. 408. Employers may disregard rollovers for purposes of cash-out amounts.

Sec. 409. Minimum distribution and inclusion requirements for section 457 plans.

## TITLE V--STRENGTHENING PENSION SECURITY AND ENFORCEMENT

Sec. 501. Repeal of percent of current liability funding limit.

Sec. 502. Maximum contribution deduction rules modified and applied to all defined benefit plans.

Sec. 503. Excise tax relief for sound pension funding.

Sec. 504. Excise tax on failure to provide notice by defined benefit plans significantly reducing future benefit accruals.

Sec. 505. Treatment of multiemployer plans under section 415.

Sec. 506. Protection of investment of employee contributions to 401(k) plans.

Sec. 507. Periodic pension benefits statements.

Sec. 508. Prohibited allocations of stock in S corporation ESOP.

## TITLE VI--REDUCING REGULATORY BURDENS

Sec. 601. Modification of timing of plan valuations.

Sec. 602. ESOP dividends may be reinvested without loss of dividend deduction.

Sec. 603. Repeal of transition rule relating to certain highly compensated employees.

Sec. 604. Employees of tax-exempt entities.

Sec. 605. Clarification of treatment of employer-provided retirement advice.

Sec. 606. Reporting simplification.

Sec. 607. Improvement of employee plans compliance resolution system.

Sec. 608. Repeal of the multiple use test.

Sec. 609. Flexibility in nondiscrimination, coverage, and line of business rules.

Sec. 610. Extension to all governmental plans of moratorium on application of certain nondiscrimination rules applicable to State and local plans.

Sec. 611. Notice and consent period regarding distributions.

Sec. 612. Annual report dissemination.

Sec. 613. Technical corrections to SAVER Act.

## TITLE VII--OTHER ERISA PROVISIONS

Sec. 701. Missing participants.

Sec. 702. Reduced PBGC premium for new plans of small employers.

Sec. 703. Reduction of additional PBGC premium for new and small plans.

Sec. 704. Authorization for PBGC to pay interest on premium overpayment refunds.

Sec. 705. Substantial owner benefits in terminated plans.

Sec. 706. Civil penalties for breach of fiduciary responsibility.

Sec. 707. Benefit suspension notice.

## TITLE VIII--PLAN AMENDMENTS

Sec. 801. Provisions relating to plan amendments.

## TITLE I--INDIVIDUAL RETIREMENT ACCOUNTS

### SEC. 101. MODIFICATION OF IRA CONTRIBUTION LIMITS.

#### (a) INCREASE IN CONTRIBUTION LIMIT-

(1) IN GENERAL- Paragraph (1)(A) of section 219(b) (relating to maximum amount of deduction) is amended by striking '\$2,000' and inserting 'the deductible amount'.

(2) DEDUCTIBLE AMOUNT- Section 219(b) is amended by adding at the end the following new paragraph:

`(5) DEDUCTIBLE AMOUNT- For purposes of paragraph (1)(A)--

`(A) IN GENERAL- The deductible amount shall be determined in accordance with the following table:

`For taxable years

--The deductible

beginning in:

--amount is:

2001

\$3,000

2002

\$4,000

2003 and thereafter

\$5,000.

`(B) CATCH-UP CONTRIBUTIONS FOR INDIVIDUALS 50 OR OLDER- In the case of an individual who has attained the age of 50 before the close of the taxable year, the deductible amount for taxable years beginning in 2001 or 2002 shall be \$5,000.

`(C) COST-OF-LIVING ADJUSTMENT-

`(i) IN GENERAL- In the case of any taxable year beginning in a calendar year after 2003, the \$5,000 amount under subparagraph (A) shall be increased by an amount equal to--

`(I) such dollar amount, multiplied by

`(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting `calendar year 2002' for `calendar year 1992' in subparagraph (B) thereof.

`(ii) ROUNDING RULES- If any amount after adjustment under clause (i) is not a multiple of \$500, such amount shall be rounded to the next lower multiple of \$500.'.

(b) CONFORMING AMENDMENTS-

(1) Section 408(a)(1) is amended by striking `in excess of \$2,000 on behalf of any

individual' and inserting `on behalf of any individual in excess of the amount in effect for such taxable year under section 219(b)(1)(A)'.

(2) Section 408(b)(2)(B) is amended by striking `\$2,000' and inserting `the dollar amount in effect under section 219(b)(1)(A)'.

(3) Section 408(b) is amended by striking `\$2,000' in the matter following paragraph (4) and inserting `the dollar amount in effect under section 219(b)(1)(A)'.

(4) Section 408(j) is amended by striking `\$2,000'.

(5) Section 408(p)(8) is amended by striking `\$2,000' and inserting `the dollar amount in effect under section 219(b)(1)(A)'.

(c) EFFECTIVE DATE- The amendments made by this section shall apply to taxable years beginning after December 31, 2000.

## TITLE II--EXPANDING COVERAGE

### SEC. 201. INCREASE IN BENEFIT AND CONTRIBUTION LIMITS.

#### (a) DEFINED BENEFIT PLANS-

##### (1) DOLLAR LIMIT-

(A) Subparagraph (A) of section 415(b)(1) (relating to limitation for defined benefit plans) is amended by striking `\$90,000' and inserting `\$160,000'.

(B) Subparagraphs (C) and (D) of section 415(b)(2) are each amended by striking `\$90,000' each place it appears in the headings and the text and inserting `\$160,000'.

(C) Paragraph (7) of section 415(b) (relating to benefits under certain collectively bargained plans) is amended by striking `the greater of \$68,212 or one-half the amount otherwise applicable for such year under paragraph (1)(A) for `\$90,000' and inserting `one-half the amount otherwise applicable for such year under paragraph (1)(A) for `\$160,000'.

(2) LIMIT REDUCED WHEN BENEFIT BEGINS BEFORE AGE 62- Subparagraph (C) of section 415(b)(2) is amended by striking `the social security retirement age' each place it appears in the heading and text and inserting `age 62' and by striking the second sentence.

(3) LIMIT INCREASED WHEN BENEFIT BEGINS AFTER AGE 65- Subparagraph (D) of section 415(b)(2) is amended by striking `the social security retirement age' each place it appears in the heading and text and inserting `age 65'.

(4) COST-OF-LIVING ADJUSTMENTS- Subsection (d) of section 415 (related to cost-of-living adjustments) is amended--

(A) by striking '\$90,000' in paragraph (1)(A) and inserting '\$160,000'; and

(B) in paragraph (3)(A)--

(i) by striking '\$90,000' in the heading and inserting '\$160,000'; and

(ii) by striking 'October 1, 1986' and inserting 'July 1, 2000'.

(5) CONFORMING AMENDMENTS-

(A) Section 415(b)(2) is amended by striking subparagraph (F).

(B) Section 415(b)(9) is amended to read as follows:

`(9) SPECIAL RULE FOR COMMERCIAL AIRLINE PILOTS-

`(A) IN GENERAL- Except as provided in subparagraph (B), in the case of any participant who is a commercial airline pilot, if, as of the time of the participant's retirement, regulations prescribed by the Federal Aviation Administration require an individual to separate from service as a commercial airline pilot after attaining any age occurring on or after age 60 and before age 62, paragraph (2)(C) shall be applied by substituting such age for age 62.

`(B) INDIVIDUALS WHO SEPARATE FROM SERVICE BEFORE AGE 60- If a participant described in subparagraph (A) separates from service before age 60, the rules of paragraph (2)(C) shall apply.'.

(C) Section 415(b)(10)(C)(i) is amended by striking 'applied without regard to paragraph (2)(F)'.

(b) DEFINED CONTRIBUTION PLANS-

(1) DOLLAR LIMIT- Subparagraph (A) of section 415(c)(1) (relating to limitation for defined contribution plans) is amended by striking '\$30,000' and inserting '\$40,000'.

(2) COST-OF-LIVING ADJUSTMENTS- Subsection (d) of section 415 (related to cost-of-living adjustments) is amended--

(A) by striking '\$30,000' in paragraph (1)(C) and inserting '\$40,000'; and

(B) in paragraph (3)(D)--

(i) by striking '\$30,000' in the heading and inserting '\$40,000'; and

(ii) by striking 'October 1, 1993' and inserting 'July 1, 2000'.

(c) QUALIFIED TRUSTS-

(1) COMPENSATION LIMIT- Sections 401(a)(17), 404(l), 408(k), and 505(b)(7) are each amended by striking '\$150,000' each place it appears and inserting '\$200,000'.

(2) BASE PERIOD AND ROUNDING OF COST-OF-LIVING ADJUSTMENT- Subparagraph (B) of section 401(a)(17) is amended--

(A) by striking 'October 1, 1993' and inserting 'July 1, 2000'; and

(B) by striking '\$10,000' both places it appears and inserting '\$5,000'.

(d) ELECTIVE DEFERRALS-

(1) IN GENERAL- Paragraph (1) of section 402(g) (relating to limitation on exclusion for elective deferrals) is amended to read as follows:

`(1) IN GENERAL-

`(A) LIMITATION- Notwithstanding subsections (e)(3) and (h)(1)(B), the elective deferrals of any individual for any taxable year shall be included in such individual's gross income to the extent the amount of such deferrals for the taxable year exceeds the applicable dollar amount.

`(B) APPLICABLE DOLLAR AMOUNT- For purposes of subparagraph (A), the applicable

dollar amount shall be the amount determined in accordance with the following table:

`For taxable years

--The applicable

beginning in

-- dollar amount:

calendar year:

2001



--\$11,000

2002

--\$12,000

2003

--\$13,000

2004

--\$14,000

2005 or thereafter

--\$15,000.'

(2) COST-OF-LIVING ADJUSTMENT- Paragraph (5) of section 402(g) is amended to read as follows:

`(5) COST-OF-LIVING ADJUSTMENT- In the case of taxable years beginning after December 31, 2005, the Secretary shall adjust the \$15,000 amount under paragraph (1)(B) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2004, and any increase under this paragraph which is not a multiple of \$500 shall be rounded to the next lowest multiple of \$500.'

(3) CONFORMING AMENDMENTS-

(A) Section 402(g) (relating to limitation on exclusion for elective deferrals), as amended by

paragraphs (1) and (2), is further amended by striking paragraph (4) and redesignating paragraphs (5), (6), (7), (8), and (9) as paragraphs (4), (5), (6), (7), and (8), respectively.

(B) Paragraph (2) of section 457(c) is amended by striking `402(g)(8)(A)(iii)' and inserting `402(g)(7)(A)(iii)'.

(C) Clause (iii) of section 501(c)(18)(D) is amended by striking `(other than paragraph (4) thereof)'.

(e) DEFERRED COMPENSATION PLANS OF STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS-

(1) IN GENERAL- Section 457 (relating to deferred compensation plans of State and

local governments and tax-exempt organizations) is amended--

(A) in subsections (b)(2)(A) and (c)(1) by striking '\$7,500' each place it appears and inserting 'the applicable dollar amount'; and

(B) in subsection (b)(3)(A) by striking '\$15,000' and inserting 'twice the dollar amount in effect under subsection (b)(2)(A)'.

(2) APPLICABLE DOLLAR AMOUNT; COST-OF-LIVING ADJUSTMENT-  
Paragraph (15) of section 457(e) is amended to read as follows:

“(15) APPLICABLE DOLLAR AMOUNT-

“(A) IN GENERAL- The applicable dollar amount shall be the amount determined in accordance with the following table:

“For taxable years

--The applicable

beginning in

-- dollar amount:

calendar year:

2001

--\$11,000

2002

--\$12,000

2003

--\$13,000

2004

--\$14,000

2005 or thereafter

--\$15,000.

`(B) COST-OF-LIVING ADJUSTMENTS- In the case of taxable years beginning after December 31, 2005, the Secretary shall adjust the \$15,000 amount under subparagraph (A) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2004, and any increase under this paragraph which is not a multiple of \$500 shall be rounded to the next lowest multiple of \$500.'

(f) SIMPLE RETIREMENT ACCOUNTS-

(1) LIMITATION- Clause (ii) of section 408(p)(2)(A) (relating to general rule for qualified salary reduction arrangement) is amended by striking `\$6,000' and inserting `the applicable dollar amount'.

(2) APPLICABLE DOLLAR AMOUNT- Subparagraph (E) of 408(p)(2) is amended to read as follows:

`(E) APPLICABLE DOLLAR AMOUNT; COST-OF-LIVING ADJUSTMENT-

`(i) IN GENERAL- For purposes of subparagraph (A)(ii), the applicable dollar amount shall be the amount determined in accordance with the following table:

`For taxable years

--The applicable

beginning in

-- dollar amount:

calendar year:

2001

--\$7,000

2002

--\$8,000

2003

--\$9,000

2004 or thereafter

--\$10,000.

`(ii) COST-OF-LIVING ADJUSTMENT- In the case of a year beginning after December 31, 2004, the Secretary shall adjust the \$10,000 amount under clause (i) at the same time and in the same manner as under section 415(d), except that the base period taken into account shall be the calendar quarter beginning July 1, 2003, and any increase under this subparagraph which is not a multiple of \$500 shall be rounded to the next lower multiple of \$500.'.

### (3) CONFORMING AMENDMENTS-

(A) Subclause (I) of section 401(k)(11)(B)(i) is amended by striking '\$6,000' and inserting 'the amount in effect under section 408(p)(2)(A)(ii)'.

(B) Section 401(k)(11) is amended by striking subparagraph (E).

(g) ROUNDING RULE RELATING TO DEFINED BENEFIT PLANS AND DEFINED CONTRIBUTION PLANS- Paragraph (4) of section 415(d) is amended to read as follows:

#### `(4) ROUNDING-

`(A) \$160,000 AMOUNT- Any increase under subparagraph (A) of paragraph (1) which is not a multiple of \$5,000 shall be rounded to the next lowest multiple of \$5,000.

`(B) \$40,000 AMOUNT- Any increase under subparagraph (C) of paragraph (1) which is not a multiple of \$1,000 shall be rounded to the next lowest multiple of \$1,000.'.

(h) EFFECTIVE DATE- The amendments made by this section shall apply to years beginning after December 31, 2000.

### SEC. 202. PLAN LOANS FOR SUBCHAPTER S OWNERS, PARTNERS, AND SOLE PROPRIETORS.

(a) AMENDMENT OF INTERNAL REVENUE CODE- Subparagraph (B) of section 4975(f)(6) (relating to exemptions not to apply to certain transactions) is amended by adding at the end the following new clause:

`(iii) LOAN EXCEPTION- For purposes of subparagraph (A)(i), the term 'owner-employee' shall only include a person described in subclause (II) or (III) of clause (i)'.

(b) AMENDMENT OF ERISA- Section 408(d)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(d)(2)) is amended by adding at the end the following

new subparagraph:

`(C) For purposes of paragraph (1)(A), the term `owner-employee' shall only include a person described in clause (ii) or (iii) of subparagraph (A).'

(c) EFFECTIVE DATE- The amendments made by this section shall apply to years beginning after December 31, 2001.

## SEC. 203. MODIFICATION OF TOP-HEAVY RULES.

### (a) SIMPLIFICATION OF DEFINITION OF KEY EMPLOYEE-

(1) IN GENERAL- Section 416(i)(1)(A) (defining key employee) is amended--

(A) by striking `or any of the 4 preceding plan years' in the matter preceding clause (i);

(B) by striking clause (i) and inserting the following:

`(i) an officer of the employer having an annual compensation greater than \$150,000,';

(C) by striking clause (ii) and redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively; and

(D) by striking the second sentence in the matter following clause (iii), as redesignated by subparagraph (C).

(2) CONFORMING AMENDMENT- Section 416(i)(1)(B)(iii) is amended by striking `and subparagraph (A)(ii).'

(b) MATCHING CONTRIBUTIONS TAKEN INTO ACCOUNT FOR MINIMUM CONTRIBUTION REQUIREMENTS- Section 416(c)(2)(A) (relating to defined contribution plans) is amended by adding at the end the following: `Employer matching contributions (as defined in section 401(m)(4)(A)) shall be taken into account for purposes of this subparagraph.'

### (c) DISTRIBUTIONS DURING LAST YEAR BEFORE DETERMINATION DATE TAKEN INTO ACCOUNT-

(1) IN GENERAL- Paragraph (3) of section 416(g) is amended to read as follows:

`(3) DISTRIBUTIONS DURING LAST YEAR BEFORE DETERMINATION DATE TAKEN INTO ACCOUNT-

`(A) IN GENERAL- For purposes of determining--

`(i) the present value of the cumulative accrued benefit for any employee, or

`(ii) the amount of the account of any employee,

such present value or amount shall be increased by the aggregate distributions made with respect to such employee under the plan during the 1-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which if it had not been terminated would have been required to be included in an aggregation group.

`(B) 5-YEAR PERIOD IN CASE OF IN-SERVICE DISTRIBUTION- In the case of any distribution made for a reason other than separation from service, death, or disability, subparagraph (A) shall be applied by substituting `5-year period' for `1-year period'.

(2) BENEFITS NOT TAKEN INTO ACCOUNT- Subparagraph (E) of section 416(g)(4) is amended--

(A) by striking `LAST 5 YEARS' in the heading and inserting `LAST YEAR BEFORE DETERMINATION DATE'; and

(B) by striking `5-year period' and inserting `1-year period'.

(d) DEFINITION OF TOP-HEAVY PLANS- Paragraph (4) of section 416(g) (relating to other special rules for top-heavy plans) is amended by adding at the end the following new subparagraph:

`(H) CASH OR DEFERRED ARRANGEMENTS USING ALTERNATIVE METHODS OF MEETING NONDISCRIMINATION REQUIREMENTS- The term `top-heavy plan' shall not include a plan which consists solely of--

`(i) a cash or deferred arrangement which meets the requirements of section 401(k)(12), and

`(ii) matching contributions with respect to which the requirements of section 401(m)(11) are met.

If, but for this subparagraph, a plan would be treated as a top-heavy plan because it is a

member of an aggregation group which is a top-heavy group, contributions under the plan may be taken into account in determining whether any other plan in the group meets the requirements of subsection (c)(2).'

(e) FROZEN PLAN EXEMPT FROM MINIMUM BENEFIT REQUIREMENT- Subparagraph (C) of section 416(c)(1) (relating to defined benefit plans) is amended--

(A) by striking `clause (ii)' in clause (i) and inserting `clause (ii) or (iii)'; and

(B) by adding at the end the following:

`(iii) EXCEPTION FOR FROZEN PLAN- For purposes of determining an employee's years of service with the employer, any service with the employer shall be disregarded to the extent that such service occurs during a plan year when the plan benefits (within the meaning of section 410(b)) no key employee or former key employee.'.

(f) ELIMINATION OF FAMILY ATTRIBUTION- Section 416(i)(1)(B) (defining 5-percent owner) is amended by adding at the end the following new clause:

`(iv) FAMILY ATTRIBUTION DISREGARDED- Solely for purposes of applying this paragraph (and not for purposes of any provision of this title which incorporates by reference the definition of a key employee or 5-percent owner under this paragraph), section 318 shall be applied without regard to subsection (a)(1) thereof in determining whether any person is a 5-percent owner.'.

(g) EFFECTIVE DATE- The amendments made by this section shall apply to years beginning after December 31, 2001.

#### SEC. 204. ELECTIVE DEFERRALS NOT TAKEN INTO ACCOUNT FOR PURPOSES OF DEDUCTION LIMITS.

(a) IN GENERAL- Section 404 (relating to deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred payment plan) is amended by adding at the end the following new subsection:

`(n) ELECTIVE DEFERRALS NOT TAKEN INTO ACCOUNT FOR PURPOSES OF DEDUCTION LIMITS- Elective deferrals (as defined in section 402(g)(3)) shall not be subject to any limitation contained in paragraph (3), (7), or (9) of subsection (a), and such elective deferrals shall

not be taken into account in applying any such limitation to any other contributions.'.

(b) EFFECTIVE DATE- The amendment made by this section shall apply to years beginning after December 31, 2001.

#### SEC. 205. REPEAL OF COORDINATION REQUIREMENTS FOR DEFERRED COMPENSATION PLANS OF STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS.

(a) IN GENERAL- Subsection (c) of section 457 (relating to deferred compensation plans of State and local governments and tax-exempt organizations), as amended by section 201, is amended to read as follows:

`(c) LIMITATION- The maximum amount of the compensation of any one individual which may be deferred under subsection (a) during any taxable year shall not exceed the amount in effect under subsection (b)(2)(A) (as modified by any adjustment provided under subsection (b)(3)).'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply to years beginning after December 31, 2001.

#### SEC. 206. ELIMINATION OF USER FEE FOR REQUESTS TO IRS REGARDING PENSION PLANS.

(a) ELIMINATION OF CERTAIN USER FEES- The Secretary of the Treasury or the Secretary's delegate shall not require payment of user fees under the program established under section 10511 of the Revenue Act of 1987 for requests to the Internal Revenue Service for determination letters with respect to the qualified status of a pension benefit plan maintained solely by one or more eligible employers or any trust which is part of the plan. The preceding sentence shall not apply to any request--

(1) made after the later of--

(A) the fifth plan year the pension benefit plan is in existence; or

(B) the end of any remedial amendment period with respect to the plan beginning within the first 5 plan years; or

(2) made by the sponsor of any prototype or similar plan which the sponsor intends to market to participating employers.

(b) PENSION BENEFIT PLAN- For purposes of this section, the term `pension benefit plan' means a pension, profit-sharing, stock bonus, annuity, or employee stock ownership plan.

(c) ELIGIBLE EMPLOYER- For purposes of this section, the term `eligible employer' has the same meaning given such term in section 408(p)(2)(C)(i)(I) of the Internal Revenue Code of 1986. The determination of whether an employer is an eligible employer under this section shall be made as of the date of the request described in subsection (a).

(d) DETERMINATION OF AVERAGE FEES CHARGED- For purposes of any determination of average fees charged, any request to which subsection (a) applies shall not be taken into account.



(e) EFFECTIVE DATE- The provisions of this section shall apply with respect to requests made after December 31, 2001.

## SEC. 207. DEDUCTION LIMITS.

### (a) STOCK BONUS AND PROFIT SHARING TRUSTS-

(1) IN GENERAL- Subclause (I) of section 404(a)(3)(A)(i) (relating to stock bonus and profit sharing trusts) is amended by striking `15 percent' and inserting `20 percent'.

(2) CONFORMING AMENDMENT- Subparagraph (C) of section 404(h)(1) is amended by striking `15 percent' each place it appears and inserting `20 percent'.

### (b) COMPENSATION-

(1) IN GENERAL- Section 404(a) (relating to general rule) is amended by adding at the end the following:

`(12) DEFINITION OF COMPENSATION- For purposes of paragraphs (3), (7), (8), and (9), the term `compensation otherwise paid or accrued during the taxable year' shall include amounts treated as `participant's compensation' under subparagraph (C) or (D) of section 415(c)(3).'

### (2) CONFORMING AMENDMENTS-

(A) Subparagraph (B) of section 404(a)(3) is amended by striking the last sentence thereof.

(B) Clause (i) of section 4972(c)(6)(B) is amended by striking `(within the meaning of section 404(a))' and inserting `(within the meaning of section 404(a) and as adjusted under section 404(a)(12))'.

(c) EFFECTIVE DATE- The amendments made by this section shall apply to years beginning after December 31, 2001.

## SEC. 208. OPTION TO TREAT ELECTIVE DEFERRALS AS AFTER-TAX CONTRIBUTIONS.

(a) IN GENERAL- Subpart A of part I of subchapter D of chapter 1 (relating to deferred compensation, etc.)

is amended by inserting after section 402 the following new section:

`SEC. 402A. OPTIONAL TREATMENT OF ELECTIVE DEFERRALS AS PLUS CONTRIBUTIONS.

`(a) GENERAL RULE- If an applicable retirement plan includes a qualified plus contribution program--

`(1) any designated plus contribution made by an employee pursuant to the program shall be treated as an elective deferral for purposes of this chapter, except that such contribution shall not be excludable from gross income, and

`(2) such plan (and any arrangement which is part of such plan) shall not be treated as failing to meet any requirement of this chapter solely by reason of including such program.

`(b) QUALIFIED PLUS CONTRIBUTION PROGRAM- For purposes of this section--

`(1) IN GENERAL- The term 'qualified plus contribution program' means a program under which an employee may elect to make designated plus contributions in lieu of all or a portion of elective deferrals the employee is otherwise eligible to make under the applicable retirement plan.

`(2) SEPARATE ACCOUNTING REQUIRED- A program shall not be treated as a qualified plus contribution program unless the applicable retirement plan--

`(A) establishes separate accounts ('designated plus accounts') for the designated plus contributions of each employee and any earnings properly allocable to the contributions, and

`(B) maintains separate recordkeeping with respect to each account.

`(c) DEFINITIONS AND RULES RELATING TO DESIGNATED PLUS CONTRIBUTIONS- For purposes of this section--

`(1) DESIGNATED PLUS CONTRIBUTION- The term 'designated plus contribution' means any elective deferral which--

`(A) is excludable from gross income of an employee without regard to this section, and

`(B) the employee designates (at such time and in such manner as the Secretary may prescribe) as not being so excludable.

`(2) DESIGNATION LIMITS- The amount of elective deferrals which an employee may designate under paragraph (1) shall not exceed the excess (if any) of--

`(A) the maximum amount of elective deferrals excludable from gross income of the employee for the taxable year (without regard to this section), over

`(B) the aggregate amount of elective deferrals of the employee for the taxable

year which the employee does not designate under paragraph (1).

`(3) ROLLOVER CONTRIBUTIONS-

`(A) IN GENERAL- A rollover contribution of any payment or distribution from a designated plus account which is otherwise allowable under this chapter may be made only if the contribution is to--

`(i) another designated plus account of the individual from whose account the payment or distribution was made, or

`(ii) a Roth IRA of such individual.

`(B) COORDINATION WITH LIMIT- Any rollover contribution to a designated plus account under subparagraph (A) shall not be taken into account for purposes of paragraph (1).

`(d) DISTRIBUTION RULES- For purposes of this title--

`(1) EXCLUSION- Any qualified distribution from a designated plus account shall not be includible in gross income.

`(2) QUALIFIED DISTRIBUTION- For purposes of this subsection--

`(A) IN GENERAL- The term 'qualified distribution' has the meaning given such term by section 408A(d)(2)(A) (without regard to clause (iv) thereof).

`(B) DISTRIBUTIONS WITHIN NONEXCLUSION PERIOD- A payment or distribution from a designated plus account shall not be treated as a qualified distribution if such payment or distribution is made within the 5-taxable-year period beginning with the earlier of--

`(i) the first taxable year for which the individual made a designated plus contribution to any designated plus account established for such individual under the same applicable retirement plan, or

`(ii) if a rollover contribution was made to such designated plus account from a designated plus account previously established for such individual under another applicable retirement plan, the first taxable

year for which the individual made a designated plus contribution to such previously established account.

`(C) DISTRIBUTIONS OF EXCESS DEFERRALS AND EARNINGS- The term 'qualified distribution' shall not include any distribution of any excess deferral under section 402(g)(2) and any income on the excess deferral.

`(3) AGGREGATION RULES- Section 72 shall be applied separately with respect to distributions and payments from a designated plus account and other distributions and payments from the plan.

`(e) OTHER DEFINITIONS- For purposes of this section--

`(1) APPLICABLE RETIREMENT PLAN- The term `applicable retirement plan' means--

`(A) an employees' trust described in section 401(a) which is exempt from tax under section 501(a), and

`(B) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b).

`(2) ELECTIVE DEFERRAL- The term `elective deferral' means any elective deferral described in subparagraph (A) or (C) of section 402(g)(3).'

(b) EXCESS DEFERRALS- Section 402(g) (relating to limitation on exclusion for elective deferrals) is amended--

(1) by adding at the end of paragraph (1) the following new sentence: `The preceding sentence shall not apply to so much of such excess as does not exceed the designated plus contributions of the individual for the taxable year.'; and

(2) by inserting `(or would be included but for the last sentence thereof)' after `paragraph (1)' in paragraph (2)(A).

(c) ROLLOVERS- Subparagraph (B) of section 402(c)(8) is amended by adding at the end the following:

`If any portion of an eligible rollover distribution is attributable to payments or distributions from a designated plus account (as defined in section 402A), an eligible retirement plan with respect to such portion shall include only another designated plus account and a Roth IRA.'.

(d) REPORTING REQUIREMENTS-

(1) W-2 INFORMATION- Section 6051(a)(8) is amended by inserting `, including the amount of designated plus contributions (as defined in section 402A)' before the comma at the end.

(2) INFORMATION- Section 6047 is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

`(f) DESIGNATED PLUS CONTRIBUTIONS- The Secretary shall require the plan administrator of each applicable retirement plan (as defined in section 402A) to make such returns and reports regarding designated plus contributions (as so defined) to the Secretary, participants and beneficiaries of the plan, and such other persons as the Secretary may prescribe.'

(e) CONFORMING AMENDMENTS-

(1) Section 408A(e) is amended by adding after the first sentence the following new sentence: `Such term includes a rollover contribution described in section 402A(c)(3)(A).'

(2) The table of sections for subpart A of part I of subchapter D of chapter 1 is amended by inserting after the item relating to section 402 the following new item:

`Sec. 402A. Optional treatment of elective deferrals as plus contributions.'

(f) EFFECTIVE DATE- The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

TITLE III--ENHANCING FAIRNESS FOR WOMEN

SEC. 301. CATCH-UP CONTRIBUTIONS FOR INDIVIDUALS AGE 50 OR OVER.

(a) IN GENERAL- Section 414 (relating to definitions and special rules) is amended by adding at the end the following new subsection:

`(v) CATCH-UP CONTRIBUTIONS FOR INDIVIDUALS AGE 50 OR OVER-

`(1) IN GENERAL- An applicable employer plan shall not be treated as failing to meet any requirement of this title solely because the plan permits an eligible participant to make additional elective deferrals in any plan year.

`(2) LIMITATION ON AMOUNT OF ADDITIONAL DEFERRALS- A plan shall not permit additional elective deferrals under paragraph (1) for any year in an amount greater than the lesser of--

`(A) \$5,000, or

`(B) the excess (if any) of--

`(i) the participant's compensation for the year, over

`(ii) any other elective deferrals of the participant for such year which are made without regard to this subsection.

`(3) TREATMENT OF CONTRIBUTIONS- In the case of any contribution to a plan under paragraph (1), such contribution shall not, with respect to the year in which the contribution is made--

`(A) be subject to any otherwise applicable limitation contained in section 402(g), 402(h)(2), 404(a), 404(h), 408(p)(2)(A)(ii), 415, or 457, or

`(B) be taken into account in applying such limitations to other contributions or benefits under such plan or any other such plan.

`(4) APPLICATION OF NONDISCRIMINATION RULES-

`(A) IN GENERAL- An applicable employer plan shall not be treated as failing to meet the nondiscrimination requirements under section 401(a)(4) with respect to benefits, rights, and features if the plan allows all eligible participants to make the same election with respect to the additional elective deferrals under this subsection.

`(B) AGGREGATION- For purposes of subparagraph (A), all plans maintained by employers who are treated as a single employer

under subsection (b), (c), (m), or (o) of section 414 shall be treated as 1 plan.

`(5) ELIGIBLE PARTICIPANT- For purposes of this subsection, the term 'eligible participant' means, with respect to any plan year, a participant in a plan--

`(A) who has attained the age of 50 before the close of the plan year, and

`(B) with respect to whom no other elective deferrals may (without regard to this subsection) be made to the plan for the plan year by reason of the application of any limitation or other restriction described in paragraph (3) or comparable limitation contained in the terms of the plan.

`(6) OTHER DEFINITIONS AND RULES- For purposes of this subsection--

`(A) APPLICABLE EMPLOYER PLAN- The term 'applicable employer plan' means--

`(i) an employees' trust described in section 401(a) which is exempt from tax under section 501(a),

`(ii) a plan under which amounts are contributed by an individual's employer for

an annuity contract described in section 403(b),

`(iii) an eligible deferred compensation plan under section 457 of an eligible employer as defined in section 457(e)(1)(A), and

`(iv) an arrangement meeting the requirements of section 408 (k) or (p).

`(B) ELECTIVE DEFERRAL- The term 'elective deferral' has the meaning given such term by subsection (u)(2)(C).

`(C) EXCEPTION FOR SECTION 457 PLANS- This subsection shall not apply to an applicable employer plan described in subparagraph (A)(iii) for any year to which section 457(b)(3) applies.

`(D) COST-OF-LIVING ADJUSTMENT- In the case of a year beginning after December 31, 2005, the Secretary shall adjust annually the \$5,000 amount in paragraph (2)(A) for increases in the cost-of-living at the same time and in the same manner as adjustments under section 415(d); except that the base period taken into account shall be the calendar quarter beginning July 1, 2004, and any increase under this subparagraph which is not a multiple of \$500 shall be rounded to the next lower multiple of \$500.'.

(b) EFFECTIVE DATE- The amendment made by this section shall apply to contributions in taxable years beginning after December 31, 2000.

## SEC. 302. EQUITABLE TREATMENT FOR CONTRIBUTIONS OF EMPLOYEES TO DEFINED CONTRIBUTION PLANS.

### (a) EQUITABLE TREATMENT-

(1) IN GENERAL- Subparagraph (B) of section 415(c)(1) (relating to limitation for defined contribution plans) is amended by striking '25 percent' and inserting '100 percent'.

(2) APPLICATION TO SECTION 403(b)- Section 403(b) is amended--

(A) by striking 'the exclusion allowance for such taxable year' in paragraph (1) and inserting 'the applicable limit under section 415';

(B) by striking paragraph (2); and

(C) by inserting 'or any amount received by a former employee after the fifth taxable year following the taxable year in which such employee was terminated' before the period at the end of the second sentence of paragraph (3).

### (3) CONFORMING AMENDMENTS-

(A) Subsection (f) of section 72 is amended by striking `section 403(b)(2)(D)(iii))' and inserting `section 403(b)(2)(D)(iii), as in effect before the enactment of the Comprehensive Retirement Security and Pension Reform Act of 2001).'

(B) Section 404(a)(10)(B) is amended by striking `, the exclusion allowance under section 403(b)(2),'

(C) Section 415(a)(2) is amended by striking `, and the amount of the contribution for such portion shall reduce the exclusion allowance as provided in section 403(b)(2).'

(D) Section 415(c)(3) is amended by adding at the end the following new subparagraph:

`(E) ANNUITY CONTRACTS- In the case of an annuity contract described in section 403(b), the term `participant's compensation' means the participant's includible compensation determined under section 403(b)(3).'

(E) Section 415(c) is amended by striking paragraph (4).

(F) Section 415(c)(7) is amended to read as follows:

**`(7) CERTAIN CONTRIBUTIONS BY CHURCH PLANS NOT TREATED AS EXCEEDING LIMIT-**

`(A) IN GENERAL- Notwithstanding any other provision of this subsection, at the election of a participant who is an employee of a church or a convention or association of churches, including an organization described in section 414(e)(3)(B)(ii), contributions and other additions for an annuity contract or retirement income account described in section 403(b) with respect to such participant, when expressed as an annual addition to such participant's account, shall be treated as not exceeding the limitation of paragraph (1) if such annual addition is not in excess of \$10,000.

`(B) \$40,000 AGGREGATE LIMITATION- The total amount of additions with respect to any participant which may be taken into account for purposes of this subparagraph for all years may not exceed \$40,000.

`(C) ANNUAL ADDITION- For purposes of this paragraph, the term `annual addition' has

the meaning given such term by paragraph (2).'

(G) Subparagraph (B) of section 402(g)(7) (as redesignated by section 201) is amended by inserting before the period at the end the following: `(as in effect



before the enactment of the Comprehensive Retirement Security and Pension Reform Act of 2001)').

(H) Section 664(g) is amended--

(i) in paragraph (3)(E) by striking 'limitations under section 415(c)' and inserting 'applicable limitation under paragraph (7)', and

(ii) by adding at the end the following new paragraph:

`(7) APPLICABLE LIMITATION-

`(A) IN GENERAL- For purposes of paragraph (3)(E), the applicable limitation under this paragraph with respect to a participant is an amount equal to the lesser of--

`(i) \$30,000, or

`(ii) 25 percent of the participant's compensation (as defined in section 415(c)(3)).

`(B) COST-OF-LIVING ADJUSTMENT- The Secretary shall adjust annually the \$30,000 amount under subparagraph (A)(i) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning October 1, 1993, and any increase under this subparagraph which is not a multiple of \$5,000 shall be rounded to the next lowest multiple of \$5,000.'.

(4) EFFECTIVE DATE- The amendments made by this subsection shall apply to years beginning after December 31, 2000.

(b) SPECIAL RULES FOR SECTIONS 403(b) AND 408-

(1) IN GENERAL- Subsection (k) of section 415 is amended by adding at the end the following new paragraph:

`(4) SPECIAL RULES FOR SECTIONS 403(b) AND 408- For purposes of this section, any annuity contract described in section 403(b) for the benefit of a participant shall be treated as a defined contribution plan maintained by each employer with respect to which the participant has the control required under subsection (b) or (c) of section 414 (as modified by subsection (h)). For purposes of this section, any contribution by an employer to a simplified employee pension plan for an individual for a taxable year shall be treated as an employer contribution to a defined contribution plan for such individual for such year.'.

(2) EFFECTIVE DATE-

(A) IN GENERAL- The amendment made by paragraph (1) shall apply to limitation years beginning after December 31, 1999.

(B) EXCLUSION ALLOWANCE- Effective for limitation years beginning in 2000, in the case of any annuity contract described in section 403(b) of the Internal Revenue Code of 1986, the amount of the contribution disqualified by reason of section 415(g) of such Code shall reduce the exclusion allowance as provided in section 403(b)(2) of such Code.

(3) MODIFICATION OF 403(b) EXCLUSION ALLOWANCE TO CONFORM TO 415 MODIFICATION- The Secretary of the Treasury shall modify the regulations regarding the exclusion allowance under section 403(b)(2) of the Internal Revenue Code of 1986 to render void the requirement that contributions to a defined benefit pension plan be treated as previously excluded amounts for purposes of the exclusion allowance. For taxable years beginning after December 31, 1999, such regulations shall be applied as if such requirement were void.

(c) DEFERRED COMPENSATION PLANS OF STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS-

(1) IN GENERAL- Subparagraph (B) of section 457(b)(2) (relating to salary limitation on eligible deferred compensation plans) is amended by striking '33 1/3 percent' and inserting '100 percent'.

(2) EFFECTIVE DATE- The amendment made by this subsection shall apply to years beginning after December 31, 2000.

SEC. 303. FASTER VESTING OF CERTAIN EMPLOYER MATCHING CONTRIBUTIONS.

(a) AMENDMENT OF INTERNAL REVENUE CODE- Section 411(a) (relating to minimum vesting standards) is amended--

(1) in paragraph (2), by striking 'A plan' and inserting 'Except as provided in paragraph (12), a plan'; and

(2) by adding at the end the following:

`(12) FASTER VESTING FOR MATCHING CONTRIBUTIONS- In the case of matching contributions (as defined in section 401(m)(4)(A)), paragraph (2) shall be applied--

`(A) by substituting '3 years' for '5 years' in subparagraph (A), and

`(B) by substituting the following table for the table contained in subparagraph

(B):

--The nonforfeitable

`Years of service:

--percentage is:

2

--20

3

--40

4

--60

5

--80

6

--100.'.

(b) AMENDMENT OF ERISA- Section 203(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(a)) is amended--

(1) in paragraph (2), by striking `A plan' and inserting `Except as provided in paragraph (4), a plan', and

(2) by adding at the end the following:

`(4) In the case of matching contributions (as defined in section 401(m)(4)(A) of the Internal Revenue Code of 1986), paragraph (2) shall be applied--

`(A) by substituting `3 years' for `5 years' in subparagraph (A), and

`(B) by substituting the following table for the table contained in subparagraph (B):

--The nonforfeitable

`Years of service:

--percentage is:

2

--20

3

--40

4

--60

5

--80

6

--100.'.

(c) EFFECTIVE DATES-

(1) IN GENERAL- Except as provided in paragraph (2), the amendments made by this section shall apply to contributions for plan years beginning after December 31, 2001.

(2) COLLECTIVE BARGAINING AGREEMENTS- In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified by the date of the enactment of this Act, the amendments made by this section shall not apply to contributions on behalf of employees covered by any such agreement for plan years beginning before the earlier of--

(A) the later of--

(i) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof on or after such date of the enactment); or

(ii) January 1, 2002; or

(B) January 1, 2006.

(3) SERVICE REQUIRED- With respect to any plan, the amendments made by this section shall not apply to any employee before the date that such employee has 1 hour of service under such plan in any plan year to which the amendments made by this section apply.

## SEC. 304. SIMPLIFY AND UPDATE THE MINIMUM DISTRIBUTION RULES.

### (a) SIMPLIFICATION AND FINALIZATION OF MINIMUM DISTRIBUTION REQUIREMENTS-

#### (1) IN GENERAL- The Secretary of the Treasury shall--

(A) simplify and finalize the regulations relating to minimum distribution requirements under sections 401(a)(9), 408(a)(6) and (b)(3), 403(b)(10), and 457(d)(2) of the Internal Revenue Code of 1986; and

(B) modify such regulations to--

(i) reflect current life expectancy; and

(ii) revise the required distribution methods so that, under reasonable assumptions, the amount of the required minimum distribution does not decrease over a participant's life expectancy.

(2) FRESH START- Notwithstanding subparagraph (D) of section 401(a)(9) of such Code, during the first year that regulations are in effect under this subsection, required distributions for future years may be redetermined to reflect changes under such regulations. Such redetermination shall include the opportunity to choose a new designated beneficiary and to elect a new method of calculating life expectancy.

(3) DATE FOR REGULATIONS- Not later than December 31, 2002, the Secretary shall issue final regulations described in paragraph (1) and such regulations shall apply without regard to whether an individual had previously begun receiving minimum distributions.

### (b) REPEAL OF RULE WHERE DISTRIBUTIONS HAD BEGUN BEFORE DEATH OCCURS-

(1) IN GENERAL- Subparagraph (B) of section 401(a)(9) is amended by striking clause (i) and redesignating clauses (ii), (iii), and (iv) as clauses (i), (ii), and (iii), respectively.

#### (2) CONFORMING CHANGES-

(A) Clause (i) of section 401(a)(9)(B) (as so redesignated) is amended--

(i) by striking `FOR OTHER CASES' in the heading; and

(ii) by striking `the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii)' and inserting `his entire interest has been distributed to him'.

(B) Clause (ii) of section 401(a)(9)(B) (as so redesignated) is amended by striking `clause (ii)' and inserting `clause (i)'.

(C) Clause (iii) of section 401(a)(9)(B) (as so redesignated) is amended--

(i) by striking `clause (iii)(I)' and inserting `clause (ii)(I)';

(ii) by striking `clause (iii)(III)' in subclause (I) and inserting `clause (ii)(III)';

(iii) by striking `the date on which the employee would have attained age 70 1/2 ,' in subclause (I) and inserting `April 1 of the calendar year following the calendar year in which the spouse attains 70 1/2 ,' ; and

(iv) by striking `the distributions to such spouse begin,' in subclause (II) and inserting `his entire interest has been distributed to him,'.

### (3) EFFECTIVE DATE-

(A) IN GENERAL- Except as provided in subparagraph (B), the amendments made by this subsection shall apply to years beginning after December 31, 2001.

### (B) DISTRIBUTIONS TO SURVIVING SPOUSE-

(i) IN GENERAL- In the case of an employee described in clause (ii), distributions to the surviving spouse of the employee shall not be required to commence prior to the date on which such distributions would have been required to begin under section 401(a)(9)(B) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act).

(ii) CERTAIN EMPLOYEES- An employee is described in this clause if such employee dies before--

(I) the date of the enactment of this Act, and

(II) the required beginning date (within the meaning of section 401(a)(9)(C) of the Internal Revenue Code of 1986) of the employee.

### (c) REDUCTION IN EXCISE TAX-

(1) IN GENERAL- Subsection (a) of section 4974 is amended by striking `50 percent' and inserting `10 percent'.

(2) EFFECTIVE DATE- The amendment made by this subsection shall apply to years beginning after December 31, 2001.

#### SEC. 305. CLARIFICATION OF TAX TREATMENT OF DIVISION OF SECTION 457 PLAN BENEFITS UPON DIVORCE.

(a) IN GENERAL- Section 414(p)(11) (relating to application of rules to governmental and church plans) is amended--

(1) by inserting `or an eligible deferred compensation plan (within the meaning of section 457(b))' after `subsection (e))'; and

(2) in the heading, by striking `GOVERNMENTAL AND CHURCH PLANS' and inserting `CERTAIN OTHER PLANS'.

(b) WAIVER OF CERTAIN DISTRIBUTION REQUIREMENTS- Paragraph (10) of section 414(p) is amended by

striking `and section 409(d)' and inserting `section 409(d), and section 457(d)'.

(c) TAX TREATMENT OF PAYMENTS FROM A SECTION 457 PLAN- Subsection (p) of section 414 is amended by redesignating paragraph (12) as paragraph (13) and inserting after paragraph (11) the following new paragraph:

`(12) TAX TREATMENT OF PAYMENTS FROM A SECTION 457 PLAN- If a distribution or payment from an eligible deferred compensation plan described in section 457(b) is made pursuant to a qualified domestic relations order, rules similar to the rules of section 402(e)(1)(A) shall apply to such distribution or payment.'

(d) EFFECTIVE DATE- The amendments made by this section shall apply to transfers, distributions, and payments made after December 31, 2001.

#### SEC. 306. MODIFICATION OF SAFE HARBOR RELIEF FOR HARDSHIP WITHDRAWALS FROM CASH OR DEFERRED ARRANGEMENTS.

(a) IN GENERAL- The Secretary of the Treasury shall revise the regulations relating to hardship distributions under section 401(k)(2)(B)(i)(IV) of the Internal Revenue Code of 1986 to provide that the period an employee is prohibited from making elective and employee contributions in order for a distribution to be deemed necessary to satisfy financial need shall be equal to 6 months.

(b) EFFECTIVE DATE- The revised regulations under subsection (a) shall apply to years beginning after December 31, 2001.

#### TITLE IV--INCREASING PORTABILITY FOR PARTICIPANTS

#### SEC. 401. ROLLOVERS ALLOWED AMONG VARIOUS TYPES OF PLANS.

##### (a) ROLLOVERS FROM AND TO SECTION 457 PLANS-

##### (1) ROLLOVERS FROM SECTION 457 PLANS-

(A) IN GENERAL- Section 457(e) (relating to other definitions and special rules) is amended by adding at the end the following:

##### `(16) ROLLOVER AMOUNTS-

`(A) GENERAL RULE- In the case of an eligible deferred compensation plan established and maintained by an employer described in subsection (e)(1)(A), if--

`(i) any portion of the balance to the credit of an employee in such plan is paid to such employee in an eligible rollover distribution (within the meaning of section 402(c)(4) without regard to subparagraph (C) thereof),

`(ii) the employee transfers any portion of the property such employee receives in such distribution to an eligible retirement plan described in section 402(c)(8)(B), and

`(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

`(B) CERTAIN RULES MADE APPLICABLE- The rules of paragraphs (2) through (7) (other than paragraph (4)(C)) and (9) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A).

`(C) REPORTING- Rollovers under this paragraph shall be reported to the Secretary in the same manner as rollovers from qualified retirement plans (as defined in section 4974(c)).'

(B) DEFERRAL LIMIT DETERMINED WITHOUT REGARD TO ROLLOVER AMOUNTS- Section 457(b)(2) (defining eligible deferred compensation plan) is amended by inserting `(other than rollover amounts)' after `taxable year'.



(C) DIRECT ROLLOVER- Paragraph (1) of section 457(d) is amended by striking `and' at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting `, and', and by inserting after subparagraph (B) the following:

`(C) in the case of a plan maintained by an employer described in subsection (e)(1)(A), the plan meets requirements similar to the requirements of section 401(a)(31).

Any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of transfer.'.

(D) WITHHOLDING-

(i) Paragraph (12) of section 3401(a) is amended by adding at the end the following:

`(E) under or to an eligible deferred compensation plan which, at the time of such payment, is a plan described in section 457(b) maintained by an employer described in section 457(e)(1)(A); or'.

(ii) Paragraph (3) of section 3405(c) is amended to read as follows:

`(3) ELIGIBLE ROLLOVER DISTRIBUTION- For purposes of this subsection, the term `eligible rollover distribution' has the meaning given such term by section 402(f)(2)(A).'

(iii) LIABILITY FOR WITHHOLDING- Subparagraph (B) of section 3405(d)(2) is amended by striking `or' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting `, or', and by adding at the end the following:

`(iv) section 457(b) and which is maintained by an eligible employer described in section 457(e)(1)(A).'

(2) ROLLOVERS TO SECTION 457 PLANS-

(A) IN GENERAL- Section 402(c)(8)(B) (defining eligible retirement plan) is amended by striking `and' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting `, and', and by inserting after clause (iv) the following new clause:

`(v) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section

457(e)(1)(A).'

(B) SEPARATE ACCOUNTING- Section 402(c) is amended by adding at the end the following new paragraph:

`(11) SEPARATE ACCOUNTING- Unless a plan described in clause (v) of paragraph (8)(B) agrees to separately account for amounts rolled into such plan from eligible retirement plans not described in such clause, the plan described in such clause may not accept transfers or rollovers from such retirement plans.'

(C) 10 PERCENT ADDITIONAL TAX- Subsection (t) of section 72 (relating to 10-percent additional tax on early distributions from qualified retirement plans) is amended by adding at the end the following new paragraph:

`(9) SPECIAL RULE FOR ROLLOVERS TO SECTION 457 PLANS- For purposes of this subsection, a distribution from an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A) shall be treated as a distribution from a qualified retirement plan described in 4974(c)(1) to the extent that such distribution is attributable to an amount transferred to an eligible deferred compensation plan from a qualified retirement plan (as defined in section 4974(c)).'

(b) ALLOWANCE OF ROLLOVERS FROM AND TO 403(b) PLANS-

(1) ROLLOVERS FROM SECTION 403(b) plans- Section 403(b)(8)(A)(ii) (relating to rollover amounts) is amended by striking `such distribution' and all that follows and inserting `such distribution to an eligible retirement plan described in section 402(c)(8)(B), and'.

(2) ROLLOVERS TO SECTION 403(b) PLANS- Section 402(c)(8)(B) (defining eligible retirement plan), as amended by subsection (a), is amended by striking `and' at the end of clause (iv), by striking the period at the end of clause (v) and inserting `, and', and by inserting after clause (v) the following new clause:

`(vi) an annuity contract described in section 403(b).'

(c) EXPANDED EXPLANATION TO RECIPIENTS OF ROLLOVER DISTRIBUTIONS- Paragraph (1) of section 402(f) (relating to written explanation to recipients of distributions eligible for rollover treatment) is amended by striking `and' at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting `, and', and by adding at the end the following new subparagraph:

`(E) of the provisions under which distributions from the eligible retirement plan receiving the distribution may be subject to restrictions and tax consequences which are different from those applicable to distributions from the plan making such distribution.'

(d) SPOUSAL ROLLOVERS- Section 402(c)(9) (relating to rollover where spouse receives distribution after death of employee) is amended by striking `; except that' and all that follows up to the end period.

(e) CONFORMING AMENDMENTS-

(1) Section 72(o)(4) is amended by striking `and 408(d)(3)' and inserting `403(b)(8), 408(d)(3), and 457(e)(16)'.

(2) Section 219(d)(2) is amended by striking `or 408(d)(3)' and inserting `408(d)(3), or 457(e)(16)'.

(3) Section 401(a)(31)(B) is amended by striking `and 403(a)(4)' and inserting `, 403(a)(4), 403(b)(8), and 457(e)(16)'.

(4) Subparagraph (A) of section 402(f)(2) is amended by striking `or paragraph (4) of section 403(a)' and inserting `, paragraph (4) of section 403(a), subparagraph (A) of section 403(b)(8), or subparagraph (A) of section 457(e)(16)'.

(5) Paragraph (1) of section 402(f) is amended by striking `from an eligible retirement plan'.

(6) Subparagraphs (A) and (B) of section 402(f)(1) are amended by striking `another eligible retirement plan' and inserting `an eligible retirement plan'.

(7) Subparagraph (B) of section 403(b)(8) is amended to read as follows:

`(B) CERTAIN RULES MADE APPLICABLE- The rules of paragraphs (2) through (7) and (9) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A), except that section 402(f) shall be applied to the payor in lieu of the plan administrator.'.

(8) Section 408(a)(1) is amended by striking `or 403(b)(8),' and inserting `403(b)(8), or 457(e)(16)'.

(9) Subparagraphs (A) and (B) of section 415(b)(2) are each amended by striking `and 408(d)(3)' and inserting `403(b)(8), 408(d)(3), and 457(e)(16)'.

(10) Section 415(c)(2) is amended by striking `and 408(d)(3)' and inserting `408(d)(3), and 457(e)(16)'.

(11) Section 4973(b)(1)(A) is amended by striking `or 408(d)(3)' and inserting `408(d)(3), or 457(e)(16)'.

(f) EFFECTIVE DATE; SPECIAL RULE-

(1) EFFECTIVE DATE- The amendments made by this section shall apply to distributions after the date of the enactment of this Act.

(2) SPECIAL RULE- Notwithstanding any other provision of law, subsections (h)(3) and (h)(5) of section 1122 of the Tax Reform Act of 1986 shall not apply to any distribution from an eligible retirement plan (as defined in clause (iii) or (iv) of section 402(c)(8)(B) of the Internal Revenue Code of 1986) on behalf of an individual if there was a rollover to such plan on behalf of such individual which is permitted solely by reason of any amendment made by this section.

#### SEC. 402. ROLLOVERS OF IRAS INTO WORKPLACE RETIREMENT PLANS.

(a) IN GENERAL- Subparagraph (A) of section 408(d)(3) (relating to rollover amounts) is amended by adding `or' at the end of clause (i), by striking clauses (ii) and (iii), and by adding at the end the following:

`(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to this paragraph).

For purposes of clause (ii), the term `eligible retirement plan' means an eligible retirement plan described in clause (iii), (iv), (v), or (vi) of section 402(c)(8)(B).'

(b) CONFORMING AMENDMENTS-

(1) Paragraph (1) of section 403(b) is amended by striking `section 408(d)(3)(A)(iii)' and inserting `section 408(d)(3)(A)(ii)'.

(2) Clause (i) of section 408(d)(3)(D) is amended by striking `(i), (ii), or (iii)' and inserting `(i) or (ii)'.

(3) Subparagraph (G) of section 408(d)(3) is amended to read as follows:

`(G) SIMPLE RETIREMENT ACCOUNTS- In the case of any payment or distribution out of a simple retirement account (as defined in subsection (p)) to which section 72(t)(6) applies, this paragraph shall not apply unless such payment or distribution is paid into another simple retirement account.'

(c) EFFECTIVE DATE; SPECIAL RULE-

(1) EFFECTIVE DATE- The amendments made by this section shall apply to distributions after the date of the enactment of this Act.

(2) SPECIAL RULE- Notwithstanding any other provision of law, subsections (h)(3) and (h)(5) of section 1122 of the Tax Reform Act of 1986 shall not apply to any distribution from an eligible retirement plan (as defined in clause (iii) or (iv) of section 402(c)(8)(B) of the Internal Revenue Code of 1986) on behalf of an individual if there was a rollover to such plan on behalf of such individual which is permitted solely by reason of the amendments made by this section.

#### SEC. 403. ROLLOVERS OF AFTER-TAX CONTRIBUTIONS.

(a) ROLLOVERS FROM EXEMPT TRUSTS- Paragraph (2) of section 402(c) (relating to maximum amount which may be rolled over) is amended by adding at the end the following: `The preceding sentence shall not apply to such distribution to the extent--

`(A) such portion is transferred in a direct trustee-to-trustee transfer to a qualified trust which is part of a plan which is a defined contribution plan and which agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

`(B) such portion is transferred to an eligible retirement plan described in clause (i) or (ii) of paragraph (8)(B).`.

(b) OPTIONAL DIRECT TRANSFER OF ELIGIBLE ROLLOVER DISTRIBUTIONS- Subparagraph (B) of section 401(a)(31) (relating to limitation) is amended by adding at the end the following: `The preceding sentence shall

not apply to such distribution if the plan to which such distribution is transferred--

`(i) agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

`(ii) is an eligible retirement plan described in clause (i) or (ii) of section 402(c)(8)(B).`.

(c) RULES FOR APPLYING SECTION 72 TO IRAS- Paragraph (3) of section 408(d) (relating to special rules for applying section 72) is amended by inserting at the end the following:

`(H) APPLICATION OF SECTION 72-

`(i) IN GENERAL- If--

`(I) a distribution is made from an individual retirement plan, and

`(II) a rollover contribution is made to an eligible retirement plan described in section 402(c)(8)(B)(iii), (iv), (v), or (vi) with respect to all or part of such distribution,

then, notwithstanding paragraph (2), the rules of clause (ii) shall apply for purposes of applying section 72.

`(ii) APPLICABLE RULES- In the case of a distribution described in clause (i)--

`(I) section 72 shall be applied separately to such distribution,

`(II) notwithstanding the pro rata allocation of income on, and investment in, the contract to distributions under section 72, the portion of such distribution rolled over to an eligible retirement plan described in clause (i) shall be treated as from income on the contract (to the extent of the aggregate income on the contract from all individual retirement plans of the distributee), and

`(III) appropriate adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.'

(d) EFFECTIVE DATE- The amendments made by this section shall apply to distributions made after the date of the enactment of this Act.

#### SEC. 404. HARDSHIP EXCEPTION TO 60-DAY RULE.

(a) EXEMPT TRUSTS- Paragraph (3) of section 402(c) (relating to transfer must be made within 60 days of receipt) is amended to read as follows:

`(3) TRANSFER MUST BE MADE WITHIN 60 DAYS OF RECEIPT-

`(A) IN GENERAL- Except as provided in subparagraph (B), paragraph (1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

`(B) HARDSHIP EXCEPTION- The Secretary may waive the 60-day requirement under subparagraph (A) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.'

(b) IRAS- Paragraph (3) of section 408(d) (relating to rollover contributions), as amended

by section 403, is amended by adding after subparagraph (H) the following new subparagraph:

`(I) WAIVER OF 60-DAY REQUIREMENT- The Secretary may waive the 60-day requirement under subparagraphs (A) and (D) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.'

(c) EFFECTIVE DATE- The amendments made by this section shall apply to distributions after the date of the enactment of this Act.

#### SEC. 405. TREATMENT OF FORMS OF DISTRIBUTION.

(a) PLAN TRANSFERS-

(1) AMENDMENT OF INTERNAL REVENUE CODE- Paragraph (6) of section 411(d) (relating to accrued benefit not to be decreased by amendment) is amended by adding at the end the following:

`(D) PLAN TRANSFERS-

`(i) IN GENERAL- A defined contribution plan (in this subparagraph referred to as the `transferee plan') shall not be treated as failing to meet the requirements of this subsection merely because the transferee plan does not provide some or all of the forms of distribution previously available under another defined contribution plan (in this subparagraph referred to as the `transferor plan') to the extent that--

`(I) the forms of distribution previously available under the transferor plan applied to the account of a participant or beneficiary under the transferor

plan that was transferred from the transferor plan to the transferee plan pursuant to a direct transfer rather than pursuant to a distribution from the transferor plan,

`(II) the terms of both the transferor plan and the transferee plan authorize the transfer described in subclause (I),

`(III) the transfer described in subclause (I) was made pursuant to a voluntary election by the participant or beneficiary whose account was transferred to the transferee plan,

`(IV) the election described in subclause (III) was made after the participant or beneficiary received a notice describing the consequences of making the election, and

`(V) the transferee plan allows the participant or beneficiary described in subclause (III) to receive any distribution to which the participant or beneficiary is entitled under the transferee plan in the form of a single sum distribution.

`(ii) EXCEPTION- Clause (i) shall apply to plan mergers and other transactions having the effect of a direct transfer, including consolidations of benefits attributable to different employers within a multiple employer plan.

`(E) ELIMINATION OF FORM OF DISTRIBUTION- Except to the extent provided in regulations, a defined contribution plan shall not be treated as failing to meet the requirements of this section merely because of the elimination of a form of distribution previously available thereunder. This subparagraph shall not apply to the elimination of a form of distribution with respect to any participant unless--

`(i) a single sum payment is available to such participant at the same time or times as the form of distribution being eliminated, and

`(ii) such single sum payment is based on the same or greater portion of the participant's account as the form of distribution being eliminated.'

(2) AMENDMENT OF ERISA- Section 204(g) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(g)) is amended by adding at the end the following:

`(4)(A) A defined contribution plan (in this subparagraph referred to as the `transferee plan') shall not be treated as failing to meet the requirements of this subsection merely because the transferee plan does not provide some or all of the forms of distribution previously available under another defined contribution plan (in this subparagraph referred to as the `transferor plan') to the extent that--

`(i) the forms of distribution previously available under the transferor plan applied to the account of a participant or beneficiary under the transferor plan that was transferred from the transferor plan to the transferee plan pursuant to a direct transfer rather than pursuant to a distribution from the transferor plan;

`(ii) the terms of both the transferor plan and the transferee plan authorize the transfer described in clause (i);

`(iii) the transfer described in clause (i) was made pursuant to a voluntary election by the participant or beneficiary whose account was transferred to the transferee plan;

`(iv) the election described in clause (iii) was made after the participant or beneficiary received a notice describing the consequences of making the election; and



`(v) the transferee plan allows the participant or beneficiary described in clause (iii) to receive any distribution to which the participant or beneficiary is entitled under the transferee plan in the form of a single sum distribution.

`(B) Subparagraph (A) shall apply to plan mergers and other transactions having the effect of a direct transfer, including consolidations of benefits attributable to different employers within a multiple employer plan.

`(5) Except to the extent provided in regulations promulgated by the Secretary of the Treasury, a defined contribution plan shall not be treated as failing to meet the requirements of this subsection merely because of the elimination of a form of distribution previously available thereunder. This paragraph shall not apply to the elimination of a form of distribution with respect to any participant unless--

`(A) a single sum payment is available to such participant at the same time or times as the form of distribution being eliminated; and

`(B) such single sum payment is based on the same or greater portion of the participant's account as the form of distribution being eliminated.'

(3) EFFECTIVE DATE- The amendments made by this subsection shall apply to years beginning after December 31, 2001.

#### (b) REGULATIONS-

(1) AMENDMENT OF INTERNAL REVENUE CODE- Paragraph (6)(B) of section 411(d) (relating to accrued benefit not to be decreased by amendment) is amended by inserting after the second sentence the following new sentence: `The Secretary shall by regulations provide that this subparagraph shall not apply to any plan amendment which reduces or eliminates benefits or subsidies which create significant burdens or complexities for the plan and plan participants and does not adversely affect the rights of any participant in a more than de minimis manner.'

(2) AMENDMENT OF ERISA- Section 204(g)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(g)(2)) is amended by inserting before the last sentence the following new sentence: `The Secretary of the Treasury shall by regulations provide that this paragraph shall not apply to any plan amendment which reduces or eliminates benefits or subsidies which create significant burdens or complexities for the plan and plan participants and does not adversely affect the rights of any participant in a more than de minimis manner.'

(3) SECRETARY DIRECTED- Not later than December 31, 2003, the Secretary of the Treasury is directed to issue regulations under section 411(d)(6) of the Internal Revenue Code of 1986 and section 204(g) of the Employee Retirement Income Security Act of 1974, including the regulations required by the amendment made by

this subsection. Such regulations shall apply to plan years beginning after December 31, 2003, or such earlier date as is specified by the Secretary of the Treasury.

#### SEC. 406. RATIONALIZATION OF RESTRICTIONS ON DISTRIBUTIONS.

##### (a) MODIFICATION OF SAME DESK EXCEPTION-

###### (1) SECTION 401(k)-

(A) Section 401(k)(2)(B)(i)(I) (relating to qualified cash or deferred arrangements) is amended by striking 'separation from service' and inserting 'severance from employment'.

(B) Subparagraph (A) of section 401(k)(10) (relating to distributions upon termination of plan or disposition of assets or subsidiary) is amended to read as follows:

'(A) IN GENERAL- An event described in this subparagraph is the termination of the plan without establishment or maintenance of another defined contribution plan (other than an employee stock ownership plan as defined in section 4975(e)(7)).'.

(C) Section 401(k)(10) is amended--

(i) in subparagraph (B)--

(I) by striking 'An event' in clause (i) and inserting 'A termination'; and

(II) by striking 'the event' in clause (i) and inserting 'the termination';

(ii) by striking subparagraph (C); and

(iii) by striking 'OR DISPOSITION OF ASSETS OR SUBSIDIARY' in the heading.

###### (2) SECTION 403(b)-

(A) Paragraphs (7)(A)(ii) and (11)(A) of section 403(b) are each amended by striking 'separates from service' and inserting 'has a severance from employment'.

(B) The heading for paragraph (11) of section 403(b) is amended by striking 'SEPARATION FROM SERVICE' and inserting 'SEVERANCE FROM EMPLOYMENT'.

(3) SECTION 457- Clause (ii) of section 457(d)(1)(A) is amended by striking `is separated from service' and inserting `has a severance from employment'.

(b) EFFECTIVE DATE- The amendments made by this section shall apply to distributions after the date of the enactment of this Act.

#### SEC. 407. PURCHASE OF SERVICE CREDIT IN GOVERNMENTAL DEFINED BENEFIT PLANS.

(a) 403(b) PLANS- Subsection (b) of section 403 is amended by adding at the end the following new paragraph:

`(13) TRUSTEE-TO-TRUSTEE TRANSFERS TO PURCHASE PERMISSIVE SERVICE CREDIT- No amount shall be includible in gross income by reason of a direct trustee-to-trustee transfer to a defined benefit governmental plan (as defined in section 414(d)) if such transfer is--

`(A) for the purchase of permissive service credit (as defined in section 415(n)(3)(A)) under such plan, or

`(B) a repayment to which section 415 does not apply by reason of subsection (k)(3) thereof.'.

(b) 457 PLANS- Subsection (e) of section 457 is amended by adding after paragraph (16) the following new paragraph:

`(17) TRUSTEE-TO-TRUSTEE TRANSFERS TO PURCHASE PERMISSIVE SERVICE CREDIT- No amount shall be includible in gross income by reason of a direct trustee-to-trustee transfer to a defined benefit governmental plan (as defined in section 414(d)) if such transfer is--

`(A) for the purchase of permissive service credit (as defined in section 415(n)(3)(A)) under such plan, or

`(B) a repayment to which section 415 does not apply by reason of subsection (k)(3) thereof.'.

(c) EFFECTIVE DATE- The amendments made by this section shall apply to trustee-to-trustee transfers after the date of the enactment of this Act.

#### SEC. 408. EMPLOYERS MAY DISREGARD ROLLOVERS FOR PURPOSES OF CASH-OUT AMOUNTS.

(a) QUALIFIED PLANS-

(1) AMENDMENT OF INTERNAL REVENUE CODE- Section 411(a)(11) (relating to restrictions on certain mandatory distributions) is amended by adding at the end the following:

“(D) SPECIAL RULE FOR ROLLOVER CONTRIBUTIONS- A plan shall not fail to meet the requirements of this paragraph if, under the terms of the plan, the present value of the nonforfeitable accrued benefit is determined without regard to that portion of such benefit which is attributable to rollover contributions (and earnings allocable thereto). For purposes of this subparagraph, the term ‘rollover contributions’ means any rollover contribution under sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16).’.

(2) AMENDMENT OF ERISA- Section 203(e) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(c)) is amended by adding at the end the following:

“(4) A plan shall not fail to meet the requirements of this subsection if, under the terms of the plan, the present value of the nonforfeitable accrued benefit is determined without regard to that portion of such benefit which is attributable to rollover contributions (and earnings allocable thereto). For purposes of this subparagraph, the term ‘rollover contributions’ means any rollover contribution under sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16) of the Internal Revenue Code of 1986.’.

(b) ELIGIBLE DEFERRED COMPENSATION PLANS- Clause (i) of section 457(e)(9)(A) is amended by striking ‘such amount’ and inserting ‘the portion of such amount which is not attributable to rollover contributions (as defined in section 411(a)(11)(D))’.

(c) EFFECTIVE DATE- The amendments made by this section shall apply to distributions after December 31, 2001.

#### SEC. 409. MINIMUM DISTRIBUTION AND INCLUSION REQUIREMENTS FOR SECTION 457 PLANS.

(a) MINIMUM DISTRIBUTION REQUIREMENTS- Paragraph (2) of section 457(d) (relating to distribution requirements) is amended to read as follows:

“(2) MINIMUM DISTRIBUTION REQUIREMENTS- A plan meets the minimum distribution requirements of this paragraph if such plan meets the requirements of section 401(a)(9).’.

(b) INCLUSION IN GROSS INCOME-

(1) YEAR OF INCLUSION- Subsection (a) of section 457 (relating to year of inclusion in gross income) is amended to read as follows:

“(a) YEAR OF INCLUSION IN GROSS INCOME-

`(1) IN GENERAL- Any amount of compensation deferred under an eligible deferred compensation plan, and any income attributable to the amounts so deferred, shall be includible in gross income only for the taxable year in which such compensation or other income--

`(A) is paid to the participant or other beneficiary, in the case of a plan of an eligible employer described in subsection (e)(1)(A), and

`(B) is paid or otherwise made available to the participant or other beneficiary, in the case of a plan of an eligible employer described in subsection (e)(1)(B).

`(2) SPECIAL RULE FOR ROLLOVER AMOUNTS- To the extent provided in section 72(t)(9), section 72(t) shall apply to any amount includible in gross income under this subsection.'.

## (2) CONFORMING AMENDMENTS-

(A) So much of paragraph (9) of section 457(e) as precedes subparagraph (A) is amended to read as follows:

`(9) BENEFITS OF TAX EXEMPT ORGANIZATION PLANS NOT TREATED AS MADE AVAILABLE BY REASON OF CERTAIN ELECTIONS, ETC- In the case of an eligible deferred compensation plan of an employer described in subsection (e)(1)(B)--'.

(B) Section 457(d) is amended by adding at the end the following new paragraph:

`(3) SPECIAL RULE FOR GOVERNMENT PLAN- An eligible deferred compensation plan of an employer described in subsection (e)(1)(A) shall not be treated as failing to meet the requirements of this subsection solely by reason of making a distribution described in subsection (e)(9)(A).'

(c) EFFECTIVE DATE- The amendments made by this section shall apply to distributions after the date of the enactment of this Act.

## TITLE V--STRENGTHENING PENSION SECURITY AND ENFORCEMENT

### SEC. 501. REPEAL OF PERCENT OF CURRENT LIABILITY FUNDING LIMIT.

(a) AMENDMENT OF INTERNAL REVENUE CODE- Section 412(c)(7) (relating to full-funding limitation) is amended--

(1) by striking 'the applicable percentage' in subparagraph (A)(i)(I) and inserting 'in the case of plan years beginning before January 1, 2004, the applicable percentage';

and

(2) by amending subparagraph (F) to read as follows:

`(F) APPLICABLE PERCENTAGE- For purposes of subparagraph (A)(i)(I), the applicable percentage shall be determined in accordance with the following table:

`In the case of any plan year

--The applicable

beginning in--

--percentage is--

2002

--165

2003

--170.'.

(b) AMENDMENT OF ERISA- Section 302(c)(7) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(c)(7)) is amended--

(1) by striking `the applicable percentage' in subparagraph (A)(i)(I) and inserting `in the case of plan years beginning before January 1, 2004, the applicable percentage'; and

(2) by amending subparagraph (F) to read as follows:

`(F) APPLICABLE PERCENTAGE- For purposes of subparagraph (A)(i)(I), the applicable percentage shall be determined in accordance with the following table:

`In the case of any plan year

--The applicable

beginning in--

--percentage is--

2002

--165

2003

--170.'.

(c) EFFECTIVE DATE- The amendments made by this section shall apply to plan years beginning after December 31, 2001.

**SEC. 502. MAXIMUM CONTRIBUTION DEDUCTION RULES  
MODIFIED AND APPLIED TO ALL DEFINED BENEFIT PLANS.**

(a) IN GENERAL- Subparagraph (D) of section 404(a)(1) (relating to special rule in case of certain plans) is amended to read as follows:

**`(D) SPECIAL RULE IN CASE OF CERTAIN PLANS-**

`(i) IN GENERAL- In the case of any defined benefit plan, except as provided in regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the unfunded termination liability (determined as if the proposed termination date referred to in section 4041(b)(2)(A)(i)(II) of the Employee Retirement Income Security Act of 1974 were the last day of the plan year).

`(ii) PLANS WITH LESS THAN 100 PARTICIPANTS- For purposes of this subparagraph, in the case of a plan which has less than 100 participants for the plan year, termination liability shall not include the liability attributable to benefit increases for highly compensated employees (as defined in section 414(q)) resulting from a plan amendment which is made or becomes effective, whichever is later, within the last 2 years before the termination date.

`(iii) RULE FOR DETERMINING NUMBER OF PARTICIPANTS- For purposes of determining whether a plan has more than 100 participants, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group (within the meaning of section 412(l)(8)(C))) shall be treated as one plan, but only employees of such member or employer shall be taken into account.

`(iv) PLANS MAINTAINED BY PROFESSIONAL SERVICE EMPLOYERS- Clause (i) shall not apply to a plan described in section 4021(b)(13) of the Employee Retirement Income Security Act of 1974.'.

(b) CONFORMING AMENDMENT- Paragraph (6) of section 4972(c) is amended to read as follows:

`(6) EXCEPTIONS- In determining the amount of nondeductible contributions for any taxable year, there shall not be taken into account so much of the contributions to one or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7) as does not exceed the greater of--

`(A) the amount of contributions not in excess of 6 percent of compensation (within the meaning of section 404(a)) paid or accrued (during the taxable year for which the contributions were made) to beneficiaries under the plans, or

`(B) the sum of--

`(i) the amount of contributions described in section 401(m)(4)(A), plus

`(ii) the amount of contributions described in section 402(g)(3)(A).

For purposes of this paragraph, the deductible limits under section 404(a)(7) shall first be applied to amounts contributed to a defined benefit plan and then to amounts described in subparagraph (B).'

(c) EFFECTIVE DATE- The amendments made by this section shall apply to plan years beginning after December 31, 2001.

#### SEC. 503. EXCISE TAX RELIEF FOR SOUND PENSION FUNDING.

(a) IN GENERAL- Subsection (c) of section 4972 (relating to nondeductible contributions) is amended by adding at the end the following new paragraph:

`(7) DEFINED BENEFIT PLAN EXCEPTION- In determining the amount of nondeductible contributions for any taxable year, an employer may elect for such year not to take into account any contributions to a defined benefit plan except to the extent that such contributions exceed the full-funding limitation (as defined in section 412(c)(7), determined without regard to subparagraph (A)(i)(I) thereof). For purposes of this paragraph, the deductible limits under section 404(a)(7) shall first be applied to amounts contributed to defined contribution plans and then to amounts described in this paragraph. If an employer makes an election under this paragraph for a taxable year, paragraph (6) shall not apply to such employer for such taxable year.'

(b) EFFECTIVE DATE- The amendment made by this section shall apply to years beginning after December 31, 2001.

#### SEC. 504. EXCISE TAX ON FAILURE TO PROVIDE NOTICE BY DEFINED BENEFIT PLANS SIGNIFICANTLY REDUCING FUTURE BENEFIT ACCRUALS.

(a) AMENDMENT OF INTERNAL REVENUE CODE-



(1) IN GENERAL- Chapter 43 (relating to qualified pension, etc., plans) is amended by adding at the end the following new section:

SEC. 4980F. FAILURE OF APPLICABLE PLANS REDUCING BENEFIT  
ACCRUALS TO SATISFY NOTICE REQUIREMENTS.

(a) IMPOSITION OF TAX- There is hereby imposed a tax on the failure of any applicable pension plan to meet the requirements of subsection (e) with respect to any applicable individual.

(b) AMOUNT OF TAX-

(1) IN GENERAL- The amount of the tax imposed by subsection (a) on any failure with respect to any applicable individual shall be \$100 for each day in the noncompliance period with respect to such failure.

(2) NONCOMPLIANCE PERIOD- For purposes of this section, the term 'noncompliance period' means, with respect to any failure, the period beginning on the date the failure first occurs and ending on the date the failure is corrected.

(c) LIMITATIONS ON AMOUNT OF TAX-

(1) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES- In the case of failures that are due to reasonable cause and not to willful neglect, the tax imposed by subsection (a) for failures during the taxable year of the employer (or, in the case of a multiemployer plan, the taxable year of the trust forming part of the plan) shall not exceed \$500,000. For purposes of the preceding sentence, all multiemployer plans of which the same trust forms a part shall be treated as one plan. For purposes of this paragraph, if not all persons who are treated as a single employer for purposes of this section have the same taxable year, the taxable years taken into account shall be determined under principles similar to the principles of section 1561.

(2) WAIVER BY SECRETARY- In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.

(d) LIABILITY FOR TAX- The following shall be liable for the tax imposed by subsection (a):

(1) In the case of a plan other than a multiemployer plan, the employer.

(2) In the case of a multiemployer plan, the plan.

(e) NOTICE REQUIREMENTS FOR PLANS SIGNIFICANTLY REDUCING BENEFIT

## ACCRUALS-

`(1) IN GENERAL- If an applicable pension plan is amended to provide for a significant reduction in the rate of future benefit accrual, the plan

administrator shall provide written notice to each applicable individual (and to each employee organization representing applicable individuals).

`(2) NOTICE- The notice required by paragraph (1) shall be written in a manner calculated to be understood by the average plan participant and shall provide sufficient information (as determined in accordance with regulations prescribed by the Secretary) to allow applicable individuals to understand the effect of the plan amendment. The Secretary may provide a simplified form of notice for, or exempt from any notice requirement, a plan--

`(A) which has fewer than 100 participants who have accrued a benefit under the plan, or

`(B) which offers participants the option to choose between the new benefit formula and the old benefit formula.

`(3) TIMING OF NOTICE- Except as provided in regulations, the notice required by paragraph (1) shall be provided within a reasonable time before the effective date of the plan amendment.

`(4) DESIGNEES- Any notice under paragraph (1) may be provided to a person designated, in writing, by the person to which it would otherwise be provided.

`(5) NOTICE BEFORE ADOPTION OF AMENDMENT- A plan shall not be treated as failing to meet the requirements of paragraph (1) merely because notice is provided before the adoption of the plan amendment if no material modification of the amendment occurs before the amendment is adopted.

`(f) DEFINITIONS AND SPECIAL RULES- For purposes of this section--

`(1) APPLICABLE INDIVIDUAL- The term 'applicable individual' means, with respect to any plan amendment--

`(A) each participant in the plan, and

`(B) any beneficiary who is an alternate payee (within the meaning of section 414(p)(8)) under an applicable qualified domestic relations order (within the meaning of section 414(p)(1)(A)),

whose rate of future benefit accrual under the plan may reasonably be expected to be significantly reduced by such plan amendment.

`(2) APPLICABLE PENSION PLAN- The term `applicable pension plan' means--

`(A) any defined benefit plan, or

`(B) an individual account plan which is subject to the funding standards of section 412.

Such term shall not include a governmental plan (within the meaning of section 414(d)) or a church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made.

`(3) EARLY RETIREMENT- A plan amendment which eliminates or significantly reduces any early retirement benefit or retirement-type subsidy (within the meaning of section 411(d)(6)(B)(i)) shall be treated as having the effect of significantly reducing the rate of future benefit accrual.

`(g) NEW TECHNOLOGIES- The Secretary may by regulations allow any notice under subsection (e) to be provided by using new technologies.'

(2) CLERICAL AMENDMENT- The table of sections for chapter 43 is amended by adding at the end the following new item:

`Sec. 4980F. Failure of applicable plans reducing benefit accruals to satisfy notice requirements.'

(b) AMENDMENT OF ERISA- Section 204(h) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(h)) is amended by adding at the end the following new paragraphs:

`(3)(A) An applicable pension plan to which paragraph (1) applies shall not be treated as meeting the requirements of such paragraph unless, in addition to any notice required to be provided to an individual or organization under such paragraph, the plan administrator provides the notice described in subparagraph (B) to each applicable individual (and to each employee organization representing applicable individuals).

`(B) The notice required by subparagraph (A) shall be written in a manner calculated to be understood by the average plan participant and shall provide sufficient information (as determined in accordance with regulations prescribed by the Secretary of the Treasury) to allow applicable individuals to understand the effect of the plan amendment. The Secretary of the Treasury may provide a simplified form of notice for, or exempt from any notice requirement, a plan--

`(i) which has fewer than 100 participants who have accrued a benefit under the plan,  
or

`(ii) which offers participants the option to choose between the new benefit formula and the old benefit formula.

`(C) Except as provided in regulations prescribed by the Secretary of the Treasury, the notice required by subparagraph (A) shall be provided within a reasonable time before the effective date of the plan amendment.

`(D) Any notice under subparagraph (A) may be provided to a person designated, in writing, by the person to which it would otherwise be provided.

`(E) A plan shall not be treated as failing to meet the requirements of subparagraph (A) merely because notice is provided before the adoption of the plan amendment if no material modification of the amendment occurs before the amendment is adopted.

`(F) The Secretary of the Treasury may by regulations allow any notice under this paragraph to be provided by using new technologies.

`(4) For purposes of paragraph (3)--

`(A) The term `applicable individual' means, with respect to any plan amendment--

`(i) each participant in the plan; and

`(ii) any beneficiary who is an alternate payee (within the meaning of section 206(d)(3)(K)) under an applicable qualified domestic relations order (within the meaning of section 206(d)(3)(B)(i)),

whose rate of future benefit accrual under the plan may reasonably be expected to be significantly reduced by such plan amendment.

`(B) The term `applicable pension plan' means--

`(i) any defined benefit plan; or

`(ii) an individual account plan which is subject to the funding standards of section 412 of the Internal Revenue Code of 1986.

`(C) A plan amendment which eliminates or significantly reduces any early retirement benefit or retirement-type subsidy (within the meaning of subsection (g)(2)(A)) shall be treated as having the effect of significantly reducing the rate of future benefit accrual.'

(c) EFFECTIVE DATES-

(1) IN GENERAL- The amendments made by this section shall apply to plan amendments taking effect on or after the date of the enactment of this Act.

(2) TRANSITION- Until such time as the Secretary of the Treasury issues regulations under sections 4980F(e)(2) and (3) of the Internal Revenue Code of 1986, and section 204(h)(3) of the Employee Retirement Income Security Act of 1974, as added by the amendments made by this section, a plan shall be treated as meeting the requirements of such sections if it makes a good faith effort to comply with such requirements.

(3) SPECIAL NOTICE RULE- The period for providing any notice required by the amendments made by this section shall not end before the date which is 3 months after the date of the enactment of this Act.

(d) STUDY- The Secretary of the Treasury shall prepare a report on the effects of conversions of traditional defined benefit plans to cash balance or hybrid formula plans. Such study shall examine the effect of such conversions on longer service participants, including the incidence and effects of 'wear away' provisions under which participants earn no additional benefits for a period of time after the conversion. As soon as practicable, but not later than 60 days after the date of the enactment of this Act, the Secretary shall submit such report, together with recommendations thereon, to the Committee on Ways and Means and the Committee on Education and the Workforce of the House of Representatives and the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate.

## SEC. 505. TREATMENT OF MULTIEMPLOYER PLANS UNDER SECTION 415.

### (a) COMPENSATION LIMIT-

(1) IN GENERAL- Paragraph (11) of section 415(b) (relating to limitation for defined benefit plans) is amended to read as follows:

'(11) SPECIAL LIMITATION RULE FOR GOVERNMENTAL AND MULTIEMPLOYER PLANS- In the case of a governmental plan (as defined in section 414(d)) or a multiemployer plan (as defined in section 414(f)), subparagraph (B) of paragraph (1) shall not apply.'

(2) CONFORMING AMENDMENT- Section 415(b)(7) (relating to benefits under certain collectively bargained plans) is amended by inserting '(other than a multiemployer plan)' after 'defined benefit plan' in the matter preceding subparagraph (A).

### (b) COMBINING AND AGGREGATION OF PLANS-

(1) COMBINING OF PLANS- Subsection (f) of section 415 (relating to combining of plans) is amended by adding at the end the following:

'(3) EXCEPTION FOR MULTIEMPLOYER PLANS- Notwithstanding paragraph (1)

and subsection (g), a multiemployer plan (as defined in section 414(f)) shall not be combined or aggregated with any other plan maintained by an employer for purposes of applying the limitations established in this section, except that such plan shall be combined or aggregated with another plan which is not such a multiemployer plan solely for purposes of determining whether such other plan meets the requirements of subsections (b)(1)(A) and (c).'

(2) CONFORMING AMENDMENT FOR AGGREGATION OF PLANS- Subsection (g) of section 415 (relating to aggregation of plans) is amended by striking 'The Secretary' and inserting 'Except as provided in subsection (f)(3), the Secretary'.

(c) EFFECTIVE DATE- The amendments made by this section shall apply to years beginning after December 31, 2001.

#### SEC. 506. PROTECTION OF INVESTMENT OF EMPLOYEE CONTRIBUTIONS TO 401(K) PLANS.

(a) IN GENERAL- Section 1524(b) of the Taxpayer Relief Act of 1997 is amended to read as follows:

`(b) EFFECTIVE DATE-

`(1) IN GENERAL- Except as provided in paragraph (2), the amendments made by this section shall apply to elective deferrals for plan years beginning after December 31, 1998.

`(2) NONAPPLICATION TO PREVIOUSLY ACQUIRED PROPERTY- The amendments made by this section shall not apply to any elective deferral which is invested in assets consisting of qualifying employer securities, qualifying employer real property, or both, if such assets were acquired before January 1, 1999.'

(b) EFFECTIVE DATE- The amendment made by this section shall apply as if included in the provision of the Taxpayer Relief Act of 1997 to which it relates.

#### SEC. 507. PERIODIC PENSION BENEFITS STATEMENTS.

(a) IN GENERAL- Section 105(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1025 (a)) is amended to read as follows:

`(a)(1) Except as provided in paragraph (2)--

`(A) the administrator of an individual account plan shall furnish a pension benefit statement--

`(i) to a plan participant at least once annually, and

`(ii) to a plan beneficiary upon written request, and

`(B) the administrator of a defined benefit plan shall furnish a pension benefit statement--

`(i) at least once every 3 years to each participant with a nonforfeitable accrued benefit who is employed by the employer maintaining the plan at the time the statement is furnished to participants, and

`(ii) to a plan participant or plan beneficiary of the plan upon written request.

`(2) Notwithstanding paragraph (1), the administrator of a plan to which more than 1 unaffiliated employer is required to contribute shall only be required to furnish a pension benefit statement under paragraph (1) upon the written request of a participant or beneficiary of the plan.

`(3) A pension benefit statement under paragraph (1)--

`(A) shall indicate, on the basis of the latest available information--

`(i) the total benefits accrued, and

`(ii) the nonforfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable,

`(B) shall be written in a manner calculated to be understood by the average plan participant, and

`(C) may be provided in written, electronic, telephonic, or other appropriate form.

`(4)(A) In the case of a defined benefit plan, the requirements of paragraph (1)(B)(i) shall be treated as met with respect to a participant if the administrator provides the participant at least once each year with notice of the availability of the pension benefit statement and the ways in which the participant may obtain such statement. Such notice shall be provided in written, electronic, telephonic, or other appropriate form, and may be included with other communications to the participant if done in a manner reasonably designed to attract the attention of the participant.

`(B) The Secretary may provide that years in which no employee or former employee benefits (within the meaning of section 410(b) of the Internal Revenue Code of 1986) under the plan need not be taken into account in determining the 3-year period under paragraph (1)(B)(i).'

(b) CONFORMING AMENDMENTS-

(1) Section 105 of the Employee Retirement Income Security Act of 1974 (29 U.S.C.

1025) is amended by striking subsection (d).

(2) Section 105(b) of such Act (29 U.S.C. 1025(b)) is amended to read as follows:

`(b) In no case shall a participant or beneficiary of a plan be entitled to more than one statement described in subsection (a)(1)(A) or (a)(1)(B)(ii), whichever is applicable, in any 12-month period.'

(c) EFFECTIVE DATE- The amendments made by this section shall apply to plan years beginning after December 31, 2002.

#### SEC. 508. PROHIBITED ALLOCATIONS OF STOCK IN S CORPORATION ESOP.

(a) IN GENERAL- Section 409 (relating to qualifications for tax credit employee stock ownership plans) is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

`(p) PROHIBITED ALLOCATIONS OF SECURITIES IN AN S CORPORATION-

`(1) IN GENERAL- An employee stock ownership plan holding employer securities consisting of stock in an S corporation shall provide that no portion of the assets of the plan attributable to (or allocable in lieu of) such employer securities may, during a nonallocation year, accrue (or be allocated directly or indirectly under any plan of the employer meeting the requirements of section 401(a)) for the benefit of any disqualified person.

`(2) FAILURE TO MEET REQUIREMENTS-

`(A) IN GENERAL- If a plan fails to meet the requirements of paragraph (1), the plan shall be treated as having distributed to any disqualified person the amount allocated to the account of such person in violation of paragraph (1) at the time of such allocation.

`(B) Cross reference-

`For excise tax relating to violations of paragraph (1) and ownership of synthetic equity, see section 4979A.

`(3) NONALLOCATION YEAR- For purposes of this subsection--

`(A) IN GENERAL- The term 'nonallocation year' means any plan year of an employee stock ownership plan if, at any time during such plan year--

`(i) such plan holds employer securities consisting of stock in an S corporation, and



`(ii) disqualified persons own at least 50 percent of the number of shares of stock in the S corporation.

`(B) ATTRIBUTION RULES- For purposes of subparagraph (A)--

`(i) IN GENERAL- The rules of section 318(a) shall apply for purposes of determining ownership, except that--

`(I) in applying paragraph (1) thereof, the members of an individual's family shall include members of the family described in paragraph (4)(D), and

`(II) paragraph (4) thereof shall not apply.

`(ii) DEEMED-OWNED SHARES- Notwithstanding the employee trust exception in section 318(a)(2)(B)(i), individual shall be treated as owning deemed-owned shares of the individual.

Solely for purposes of applying paragraph (5), this subparagraph shall be applied after the attribution rules of paragraph (5) have been applied.

`(4) DISQUALIFIED PERSON- For purposes of this subsection--

`(A) IN GENERAL- The term `disqualified person' means any person if--

`(i) the aggregate number of deemed-owned shares of such person and the members of such person's family is at least 20 percent of the number of deemed-owned shares of stock in the S corporation, or

`(ii) in the case of a person not described in clause (i), the number of deemed-owned shares of such person is at least 10 percent of the number of deemed-owned shares of stock in such corporation.

`(B) TREATMENT OF FAMILY MEMBERS- In the case of a disqualified person described in subparagraph (A)(i), any member of such person's family with deemed-owned shares shall be treated as a disqualified person if not otherwise treated as a disqualified person under subparagraph (A).

`(C) DEEMED-OWNED SHARES-

`(i) IN GENERAL- The term `deemed-owned shares' means, with respect to any person--

`(I) the stock in the S corporation constituting employer securities of an employee stock ownership plan which is allocated to such person

under the plan, and

`(II) such person's share of the stock in such corporation which is held by such plan but which is not allocated under the plan to participants.

`(ii) PERSON'S SHARE OF UNALLOCATED STOCK- For purposes of clause (i)(II), a person's share of unallocated S corporation stock held by such plan is the amount of the unallocated stock which would be allocated to such person if the unallocated stock were allocated to all participants in the same proportions as the most recent stock allocation under the plan.

`(D) MEMBER OF FAMILY- For purposes of this paragraph, the term `member of the family' means, with respect to any individual--

`(i) the spouse of the individual,

`(ii) an ancestor or lineal descendant of the individual or the individual's spouse,

`(iii) a brother or sister of the individual or the individual's spouse and any lineal descendant of the brother or sister, and

`(iv) the spouse of any individual described in clause (ii) or (iii).

A spouse of an individual who is legally separated from such individual under a decree of divorce or separate maintenance shall not be treated as such individual's spouse for purposes of this subparagraph.

`(5) TREATMENT OF SYNTHETIC EQUITY- For purposes of paragraphs (3) and (4), in the case of a person who owns synthetic equity in the S corporation, except to the extent provided in regulations, the shares of stock in such corporation on which such synthetic equity is based shall be treated as outstanding stock in such corporation and deemed-owned shares of such person if such treatment of synthetic equity of 1 or more such persons results in--

`(A) the treatment of any person as a disqualified person, or

`(B) the treatment of any year as a nonallocation year.

For purposes of this paragraph, synthetic equity shall be treated as owned by a person in the same manner as stock is treated as owned by a person under the rules of paragraphs (2) and (3) of section 318(a). If, without regard to this paragraph, a person is treated as a disqualified person or a year is treated as a nonallocation year, this paragraph shall not be construed to result in the person or year not being so treated.

`(6) DEFINITIONS- For purposes of this subsection--

`(A) EMPLOYEE STOCK OWNERSHIP PLAN- The term `employee stock ownership plan' has the meaning given such term by section 4975(e)(7).

`(B) EMPLOYER SECURITIES- The term `employer security' has the meaning given such term by section 409(l).

`(C) SYNTHETIC EQUITY- The term `synthetic equity' means any stock option, warrant, restricted stock, deferred issuance stock right, or similar interest or right that gives the holder the right to acquire or receive stock of the S corporation in the future. Except to the extent provided in regulations, synthetic equity also includes a stock appreciation right, phantom stock unit, or similar right to a future cash payment based on the value of such stock or appreciation in such value.

`(7) REGULATIONS- The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.'

(b) COORDINATION WITH SECTION 4975(e)(7)- The last sentence of section 4975(e)(7) (defining employee stock ownership plan) is amended by inserting `, section 409(p),' after `409(n)'.

(c) EXCISE TAX-

(1) APPLICATION OF TAX- Subsection (a) of section 4979A (relating to tax on certain prohibited allocations of employer securities) is amended--

(A) by striking `or' at the end of paragraph (1), and

(B) by striking all that follows paragraph (2) and inserting the following:

`(3) there is any allocation of employer securities which violates the provisions of section 409(p), or a nonallocation year described in subsection (e)(2)(C) with respect to an employee stock ownership plan, or

`(4) any synthetic equity is owned by a disqualified person in any nonallocation year,

there is hereby imposed a tax on such allocation or ownership equal to 50 percent of the amount involved.'

(2) LIABILITY- Section 4979A(c) (defining liability for tax) is amended to read as follows:

`(c) LIABILITY FOR TAX- The tax imposed by this section shall be paid--

`(1) in the case of an allocation referred to in paragraph (1) or (2) of subsection (a), by--

`(A) the employer sponsoring such plan, or

`(B) the eligible worker-owned cooperative,

which made the written statement described in section 664(g)(1)(E) or in section 1042(b)(3)(B) (as the case may be), and

`(2) in the case of an allocation or ownership referred to in paragraph (3) or (4) of subsection (a), by the S corporation the stock in which was so allocated or owned.'.

(3) DEFINITIONS- Section 4979A(e) (relating to definitions) is amended to read as follows:

`(e) DEFINITIONS AND SPECIAL RULES- For purposes of this section--

`(1) DEFINITIONS- Except as provided in paragraph (2), terms used in this section have the same respective meanings as when used in sections 409 and 4978.

`(2) SPECIAL RULES RELATING TO TAX IMPOSED BY REASON OF PARAGRAPH (3) OR (4) OF SUBSECTION (a)-

`(A) PROHIBITED ALLOCATIONS- The amount involved with respect to any tax imposed by reason of subsection (a)(3) is the amount allocated to the account of any person in violation of section 409(p)(1).

`(B) SYNTHETIC EQUITY- The amount involved with respect to any tax imposed by reason of subsection (a)(4) is the value of the shares on which the synthetic equity is based.

`(C) SPECIAL RULE DURING FIRST NONALLOCATION YEAR- For purposes of subparagraph (A), the amount involved for the first nonallocation year of any employee stock ownership plan shall be determined by taking into account the total value of all the deemed-owned shares of all disqualified persons with respect to such plan.

`(D) STATUTE OF LIMITATIONS- The statutory period for the assessment of any tax imposed by this section by reason of paragraph (3) or (4) of subsection (a) shall not expire before the date which is 3 years from the later of--

`(i) the allocation or ownership referred to in such paragraph giving rise to such tax, or

`(ii) the date on which the Secretary is notified of such allocation or ownership.'.

(d) EFFECTIVE DATES-

(1) IN GENERAL- The amendments made by this section shall apply to plan years beginning after December 31, 2004.

(2) EXCEPTION FOR CERTAIN PLANS- In the case of any--

(A) employee stock ownership plan established after March 14, 2001, or

(B) employee stock ownership plan established on or before such date if employer securities held by the plan consist of stock in a corporation with respect to which an election under section 1362(a) of the Internal Revenue Code of 1986 is not in effect on such date,

the amendments made by this section shall apply to plan years ending after March 14, 2001.

TITLE VI--REDUCING REGULATORY BURDENS

SEC. 601. MODIFICATION OF TIMING OF PLAN VALUATIONS.

(a) AMENDMENT OF INTERNAL REVENUE CODE- Paragraph (9) of section 412(c)(9) (relating to annual valuation) is amended to read as follows:

`(9) ANNUAL VALUATION-

`(A) IN GENERAL- For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary.

`(B) VALUATION DATE-

`(i) CURRENT YEAR- Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

`(ii) ELECTION TO USE PRIOR YEAR VALUATION- The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if--

`(I) an election is in effect under this clause with respect to the plan,  
and

`(II) as of such date, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (7)(B)).

`(iii) ADJUSTMENTS- Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

`(iv) ELECTION- An election under clause (ii), once made, shall be irrevocable without the consent of the Secretary.'

(b) AMENDMENT OF ERISA- Paragraph (9) of section 302(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(c)) is amended--

(1) by inserting `(A)' after `(9)'; and

(2) by adding at the end the following:

`(B)(i) Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

`(ii) The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if--

`(I) an election is in effect under this clause with respect to the plan; and

`(II) as of such date, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (7)(B)).

`(iii) Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

`(iv) An election under clause (ii), once made, shall be irrevocable without the consent of the Secretary of the Treasury.'

(c) EFFECTIVE DATE- The amendments made by this section shall apply to plan years beginning after December 31, 2001.

#### SEC. 602. ESOP DIVIDENDS MAY BE REINVESTED WITHOUT LOSS OF DIVIDEND DEDUCTION.

(a) IN GENERAL- Section 404(k)(2)(A) (defining applicable dividends) is amended by striking `or' at the end of clause (ii), by redesignating clause (iii) as clause (iv), and by inserting after clause (ii) the following new clause:

`(iii) is, at the election of such participants or their beneficiaries--

`(I) payable as provided in clause (i) or (ii), or

`(II) paid to the plan and reinvested in qualifying employer securities,  
or'.

(b) EFFECTIVE DATE- The amendments made by this section shall apply to taxable years beginning after December 31, 2000.

#### SEC. 603. REPEAL OF TRANSITION RULE RELATING TO CERTAIN HIGHLY COMPENSATED EMPLOYEES.

(a) IN GENERAL- Paragraph (4) of section 1114(c) of the Tax Reform Act of 1986 is hereby repealed.

(b) EFFECTIVE DATE- The repeal made by subsection (a) shall apply to plan years beginning after December 31, 2001.

#### SEC. 604. EMPLOYEES OF TAX-EXEMPT ENTITIES.

(a) IN GENERAL- The Secretary of the Treasury shall modify Treasury Regulations section 1.410(b)-6(g) to provide that employees of an organization described in section 403(b)(1)(A)(i) of the Internal Revenue Code of 1986 who are eligible to make contributions under section 403(b) of such Code pursuant to a salary reduction agreement may be treated as excludable with respect to a plan under section 401(k) or (m) of such Code that is provided under the same general arrangement as a plan under such section 401(k), if--

(1) no employee of an organization described in section 403(b)(1)(A)(i) of such Code is eligible to participate in such section 401(k) plan or section 401(m) plan; and

(2) 95 percent of the employees who are not employees of an organization described in section 403(b)(1)(A)(i) of such Code are eligible to participate in such plan under such section 401(k) or (m).

(b) EFFECTIVE DATE- The modification required by subsection (a) shall apply as of the same date set forth in section 1426(b) of the Small Business Job Protection Act of 1996.

#### SEC. 605. CLARIFICATION OF TREATMENT OF EMPLOYER-PROVIDED RETIREMENT ADVICE.

(a) IN GENERAL- Subsection (a) of section 132 (relating to exclusion from gross income) is amended by striking `or' at the end of paragraph (5), by striking the period at the end of paragraph (6) and inserting `, or', and by adding at the end the following new paragraph:

`(7) qualified retirement planning services.'.

(b) QUALIFIED RETIREMENT PLANNING SERVICES DEFINED- Section 132 is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following:

`(m) QUALIFIED RETIREMENT PLANNING SERVICES-

`(1) IN GENERAL- For purposes of this section, the term `qualified retirement planning services' means any retirement planning advice or information provided to an employee and his spouse by an employer maintaining a qualified employer plan.

`(2) NONDISCRIMINATION RULE- Subsection (a)(7) shall apply in the case of highly compensated employees only if such services are available on substantially the same terms to each member of the group of employees normally provided education and information regarding the employer's qualified employer plan.

`(3) QUALIFIED EMPLOYER PLAN- For purposes of this subsection, the term `qualified employer plan' means a plan, contract, pension, or account described in section 219(g)(5).'

(c) EFFECTIVE DATE- The amendments made by this section shall apply to years beginning after December 31, 2001.

## SEC. 606. REPORTING SIMPLIFICATION.

(a) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR OWNERS AND THEIR SPOUSES-

(1) IN GENERAL- The Secretary of the Treasury shall modify the requirements for filing annual returns with respect to one-participant retirement plans to ensure that such plans with assets of \$250,000 or less as of the close of the plan year need not file a return for that year.

(2) ONE-PARTICIPANT RETIREMENT PLAN DEFINED- For purposes of this subsection, the term `one-participant retirement plan' means a retirement plan that--

(A) on the first day of the plan year--

(i) covered only the employer (and the employer's spouse) and the employer owned the entire business (whether or not incorporated); or

(ii) covered only one or more partners (and their spouses) in a business partnership (including partners in an S or C corporation);

(B) meets the minimum coverage requirements of section 410(b) of the Internal



Revenue Code of 1986 without being combined with any other plan of the business that covers the employees of the business;

(C) does not provide benefits to anyone except the employer (and the employer's spouse) or the partners (and their spouses);

(D) does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control; and

(E) does not cover a business that leases employees.

(3) OTHER DEFINITIONS- Terms used in paragraph (2) which are also used in section 414 of the Internal Revenue Code of 1986 shall have the respective meanings given such terms by such section.

(b) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR PLANS WITH FEWER THAN 25 EMPLOYEES- In the case of a retirement plan which covers less than 25 employees on the first day of the plan year and meets the requirements described in subparagraphs (B), (D), and (E) of subsection (a)(2), the Secretary of the Treasury shall provide for the filing of a simplified annual return that is substantially similar to the annual return required to be filed by a one-participant retirement plan.

(c) EFFECTIVE DATE- The provisions of this section shall take effect on January 1, 2002.

#### SEC. 607. IMPROVEMENT OF EMPLOYEE PLANS COMPLIANCE RESOLUTION SYSTEM.

The Secretary of the Treasury shall continue to update and improve the Employee Plans Compliance Resolution System (or any successor program) giving special attention to--

(1) increasing the awareness and knowledge of small employers concerning the availability and use of the program;

(2) taking into account special concerns and circumstances that small employers face with respect to compliance and correction of compliance failures;

(3) extending the duration of the self-correction period under the Administrative Policy Regarding Self-Correction for significant compliance failures;

(4) expanding the availability to correct insignificant compliance failures under the Administrative Policy Regarding Self-Correction during audit; and

(5) assuring that any tax, penalty, or sanction that is imposed by reason of a compliance failure is not excessive and bears a reasonable relationship to the nature, extent, and severity of the failure.

SEC. 608. REPEAL OF THE MULTIPLE USE TEST.

(a) IN GENERAL- Paragraph (9) of section 401(m) is amended to read as follows:

`(9) REGULATIONS- The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and subsection (k), including regulations permitting appropriate aggregation of plans and contributions.'.

(b) EFFECTIVE DATE- The amendment made by this section shall apply to years beginning after December 31, 2001.

SEC. 609. FLEXIBILITY IN NONDISCRIMINATION, COVERAGE, AND LINE OF BUSINESS RULES.

(a) NONDISCRIMINATION-

(1) IN GENERAL- The Secretary of the Treasury shall, by regulation, provide that a plan shall be deemed to satisfy the requirements of section 401(a)(4) of the Internal Revenue Code of 1986 if such plan satisfies the facts and circumstances test under section 401(a)(4) of such Code, as in effect before January 1, 1994, but only if--

(A) the plan satisfies conditions prescribed by the Secretary to appropriately limit the availability of such test; and

(B) the plan is submitted to the Secretary for a determination of whether it satisfies such test.

Subparagraph (B) shall only apply to the extent provided by the Secretary.

(2) EFFECTIVE DATES-

(A) REGULATIONS- The regulation required by paragraph (1) shall apply to years beginning after December 31, 2003.

(B) CONDITIONS OF AVAILABILITY- Any condition of availability prescribed by the Secretary under paragraph (1)(A) shall not apply before the first year beginning not less than 120 days after the date on which such condition is prescribed.

(b) COVERAGE TEST-

(1) IN GENERAL- Section 410(b)(1) (relating to minimum coverage requirements) is amended by adding at the end the following:

`(D) In the case that the plan fails to meet the requirements of subparagraphs (A),

(B) and (C), the plan--

`(i) satisfies subparagraph (B), as in effect immediately before the enactment of the Tax Reform Act of 1986,

`(ii) is submitted to the Secretary for a determination of whether it satisfies the requirement described in clause (i), and

`(iii) satisfies conditions prescribed by the Secretary by regulation that appropriately limit the availability of this subparagraph.

Clause (ii) shall apply only to the extent provided by the Secretary.'.

## (2) EFFECTIVE DATES-

(A) IN GENERAL- The amendment made by paragraph (1) shall apply to years beginning after December 31, 2003.

(B) CONDITIONS OF AVAILABILITY- Any condition of availability prescribed by the Secretary under regulations prescribed by the Secretary under section 410(b)(1)(D) of the Internal Revenue Code of 1986 shall not apply before the first year beginning not less than 120 days after the date on which such condition is prescribed.

(c) LINE OF BUSINESS RULES- The Secretary of the Treasury shall, on or before December 31, 2003, modify the existing regulations issued under section 414(r) of the Internal Revenue Code of 1986 in order to expand (to the extent that the Secretary determines appropriate) the ability of a pension plan to demonstrate compliance with the line of business requirements based upon the facts and circumstances surrounding the design and operation of the plan, even though the plan is unable to satisfy the mechanical tests currently used to determine compliance.

## SEC. 610. EXTENSION TO ALL GOVERNMENTAL PLANS OF MORATORIUM ON APPLICATION OF CERTAIN NONDISCRIMINATION RULES APPLICABLE TO STATE AND LOCAL PLANS.

### (a) IN GENERAL-

(1) Subparagraph (G) of section 401(a)(5) and subparagraph (H) of section 401(a)(26) are each amended by striking `section 414(d))' and all that follows and inserting `section 414(d)).'.

(2) Subparagraph (G) of section 401(k)(3) and paragraph (2) of section 1505(d) of the Taxpayer Relief Act of 1997 are each amended by striking `maintained by a State or local government or political subdivision thereof (or agency or instrumentality

thereof').

(b) CONFORMING AMENDMENTS-

(1) The heading for subparagraph (G) of section 401(a)(5) is amended to read as follows: `GOVERNMENTAL PLANS'.

(2) The heading for subparagraph (H) of section 401(a)(26) is amended to read as follows: `EXCEPTION FOR GOVERNMENTAL PLANS'.

(3) Subparagraph (G) of section 401(k)(3) is amended by inserting `GOVERNMENTAL PLANS- ' after `(G)'.

(c) EFFECTIVE DATE- The amendments made by this section shall apply to years beginning after December 31, 2001.

SEC. 611. NOTICE AND CONSENT PERIOD REGARDING DISTRIBUTIONS.

(a) EXPANSION OF PERIOD-

(1) AMENDMENT OF INTERNAL REVENUE CODE-

(A) IN GENERAL- Subparagraph (A) of section 417(a)(6) is amended by striking `90-day' and inserting `180-day'.

(B) MODIFICATION OF REGULATIONS- The Secretary of the Treasury shall modify the regulations under sections 402(f), 411(a)(11), and 417 of the Internal Revenue Code of 1986 to substitute `180 days' for `90 days' each place it appears in Treasury Regulations sections 1.402(f)-1, 1.411(a)-11(c), and 1.417(e)-1(b).

(2) AMENDMENT OF ERISA- Section 205(c)(7)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(c)(7)(A)) is amended by striking `90-day' and inserting `180-day'.

(3) EFFECTIVE DATE- The amendments made by paragraph (1)(A) and (2) and the modifications required by paragraph (1)(B) shall apply to years beginning after December 31, 2001.

(b) CONSENT REGULATION INAPPLICABLE TO CERTAIN DISTRIBUTIONS-

(1) IN GENERAL- The Secretary of the Treasury shall modify the regulations under section 411(a)(11) of the Internal Revenue Code of 1986 to provide that the description of a participant's right, if any, to defer receipt of a distribution shall also describe the consequences of failing to defer such receipt.

(2) EFFECTIVE DATE- The modifications required by paragraph (1) shall apply to years beginning after December 31, 2001.

#### SEC. 612. ANNUAL REPORT DISSEMINATION.

(a) REPORT AVAILABLE THROUGH ELECTRONIC MEANS- Section 104(b)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024(b)(3)) is amended by adding at the end the following new sentence: 'The requirement to furnish information under the previous sentence shall be satisfied if the administrator makes such information reasonably available through electronic means or other new technology.'

(b) EFFECTIVE DATE- The amendment made by this section shall apply to reports for years beginning after December 31, 2000.

#### SEC. 623. TECHNICAL CORRECTIONS TO SAVER ACT.

Section 517 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1147) is amended--

(1) in subsection (a), by striking '2001 and 2005 on or after September 1 of each year involved' and inserting '2001, 2005, and 2009 in the month of September of each year involved';

(2) in subsection (b), by adding at the end the following new sentence: 'To effectuate the purposes of this paragraph, the Secretary may enter into a cooperative agreement, pursuant to the Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. 6301 et seq.), with the American Savings Education Council.';

(3) in subsection (e)(2)--

(A) by striking 'Committee on Labor and Human Resources' in subparagraph (D) and inserting 'Committee on Health, Education, Labor, and Pensions';

(B) by striking subparagraph (F) and inserting the following:

'(F) the Chairman and Ranking Member of the Subcommittee on Labor, Health and Human Services, and Education of the Committee on Appropriations of the House of Representatives and the Chairman and Ranking Member of the Subcommittee on Labor, Health and Human Services, and Education of the Committee on Appropriations of the Senate';

(C) by redesignating subparagraph (G) as subparagraph (J); and

(D) by inserting after subparagraph (F) the following new subparagraphs:

'(G) the Chairman and Ranking Member of the Committee on Finance of the

Senate;

`(H) the Chairman and Ranking Member of the Committee on Ways and Means of the House of Representatives;

`(I) the Chairman and Ranking Member of the Subcommittee on Employer-Employee Relations of the Committee on Education and the Workforce of the House of Representatives; and';

(4) in subsection (e)(3)(A)--

(A) by striking `There shall be no more than 200 additional participants.' and inserting

`The participants in the National Summit shall also include additional participants appointed under this subparagraph.';

(B) by striking `one-half shall be appointed by the President,' in clause (i) and inserting `not more than 100 participants shall be appointed under this clause by the President,', and by striking `and' at the end of clause (i);

(C) by striking `one-half shall be appointed by the elected leaders of Congress' in clause (ii) and inserting `not more than 100 participants shall be appointed under this clause by the elected leaders of Congress', and by striking the period at the end of clause (ii) and inserting `; and';

(D) by adding at the end the following new clause:

`(iii) The President, in consultation with the elected leaders of Congress referred to in subsection (a), may appoint under this clause additional participants to the National Summit. The number of such additional participants appointed under this clause may not exceed the lesser of 3 percent of the total number of all additional participants appointed under this paragraph, or 10. Such additional participants shall be appointed from persons nominated by the organization referred to in subsection (b)(2) which is made up of private sector businesses and associations partnered with Government entities to promote long term financial security in retirement through savings and with which the Secretary is required thereunder to consult and cooperate and shall not be Federal, State, or local government employees.';

(5) in subsection (e)(3)(B), by striking `January 31, 1998' in subparagraph (B) and inserting `May 1, 2001, May 1, 2005, and May 1, 2009, for each of the subsequent summits, respectively';

(6) in subsection (f)(1)(C), by inserting `, no later than 90 days prior to the date of the

commencement of the National Summit,' after `comment' in paragraph (1)(C);

(7) in subsection (g), by inserting `, in consultation with the congressional leaders specified in subsection (e)(2),' after `report';

(8) in subsection (i)--

(A) by striking `beginning on or after October 1, 1997' in paragraph (1) and inserting `2001, 2005, and 2009'; and

(B) by adding at the end the following new paragraph:

`(3) RECEPTION AND REPRESENTATION AUTHORITY- The Secretary is hereby granted reception and representation authority limited specifically to the events at the National Summit. The Secretary shall use any private contributions accepted in connection with the National Summit prior to using funds appropriated for purposes of the National Summit pursuant to this paragraph.'; and

(9) in subsection (k)--

(A) by striking `shall enter into a contract on a sole-source basis' and inserting `may enter into a contract on a sole-source basis'; and

(B) by striking `fiscal year 1998' and inserting `fiscal years 2001, 2005, and 2009'.

## TITLE VII--OTHER ERISA PROVISIONS

### SEC. 701. MISSING PARTICIPANTS.

(a) IN GENERAL- Section 4050 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1350) is amended by redesignating subsection (c) as subsection (e) and by inserting after subsection (b) the following new subsections:

`(c) MULTIEMPLOYER PLANS- The corporation shall prescribe rules similar to the rules in subsection (a) for multiemployer plans covered by this title that terminate under section 4041A.

`(d) PLANS NOT OTHERWISE SUBJECT TO TITLE-

`(1) TRANSFER TO CORPORATION- The plan administrator of a plan described in paragraph (4) may elect to transfer a missing participant's benefits to the corporation upon termination of the plan.

`(2) INFORMATION TO THE CORPORATION- To the extent provided in regulations, the plan administrator of a plan described in paragraph (4) shall, upon

termination of the plan, provide the corporation information with respect to benefits of a missing participant if the plan transfers such benefits--

`(A) to the corporation, or

`(B) to an entity other than the corporation or a plan described in paragraph (4)(B)(ii).

`(3) PAYMENT BY THE CORPORATION- If benefits of a missing participant were transferred to the corporation under paragraph (1), the corporation shall, upon location of the participant or beneficiary, pay to the participant or beneficiary the amount transferred (or the appropriate survivor benefit) either--

`(A) in a single sum (plus interest), or

`(B) in such other form as is specified in regulations of the corporation.

`(4) PLANS DESCRIBED- A plan is described in this paragraph if--

`(A) the plan is a pension plan (within the meaning of section 3(2))--

`(i) to which the provisions of this section do not apply (without regard to this subsection), and

`(ii) which is not a plan described in paragraphs (2) through (11) of section 4021(b), and

`(B) at the time the assets are to be distributed upon termination, the plan--

`(i) has missing participants, and

`(ii) has not provided for the transfer of assets to pay the benefits of all missing participants to another pension plan (within the meaning of section 3(2)).

`(5) CERTAIN PROVISIONS NOT TO APPLY- Subsections (a)(1) and (a)(3) shall not apply to a plan described in paragraph (4).'

(b) EFFECTIVE DATE- The amendment made by this section shall apply to distributions made after final regulations implementing subsections (c) and (d) of section 4050 of the Employee Retirement Income Security Act of 1974 (as added by subsection (a)), respectively, are prescribed.

SEC. 702. REDUCED PBGC PREMIUM FOR NEW PLANS OF SMALL EMPLOYERS.



(a) IN GENERAL- Subparagraph (A) of section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended--

(1) in clause (i), by inserting 'other than a new single-employer plan (as defined in subparagraph (F)) maintained by a small employer (as so defined),' after 'single-employer plan,'

(2) in clause (iii), by striking the period at the end and inserting ', and', and

(3) by adding at the end the following new clause:

'(iv) in the case of a new single-employer plan (as defined in subparagraph (F)) maintained by a small employer (as so defined) for the plan year, \$5 for each individual who is a participant in such plan during the plan year.'

(b) DEFINITION OF NEW SINGLE-EMPLOYER PLAN- Section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)) is amended by adding at the end the following new subparagraph:

'(F)(i) For purposes of this paragraph, a single-employer plan maintained by a contributing sponsor shall be treated as a new single-employer plan for each of its first

5 plan years if, during the 36-month period ending on the date of the adoption of such plan, the sponsor or any member of such sponsor's controlled group (or any predecessor of either) did not establish or maintain a plan to which this title applies with respect to which benefits were accrued for substantially the same employees as are in the new single-employer plan.

'(ii)(I) For purposes of this paragraph, the term 'small employer' means an employer which on the first day of any plan year has, in aggregation with all members of the controlled group of such employer, 100 or fewer employees.

'(II) In the case of a plan maintained by two or more contributing sponsors that are not part of the same controlled group, the employees of all contributing sponsors and controlled groups of such sponsors shall be aggregated for purposes of determining whether any contributing sponsor is a small employer.'

(c) EFFECTIVE DATE- The amendments made by this section shall apply to plans established after December 31, 2001.

#### SEC. 703. REDUCTION OF ADDITIONAL PBGC PREMIUM FOR NEW AND SMALL PLANS.

(a) NEW PLANS- Subparagraph (E) of section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)(E)) is amended by adding at the end the following new clause:

`(v) In the case of a new defined benefit plan, the amount determined under clause (ii) for any plan year shall be an amount equal to the product of the amount determined under clause (ii) and the applicable percentage. For purposes of this clause, the term `applicable percentage' means--

`(I) 0 percent, for the first plan year.

`(II) 20 percent, for the second plan year.

`(III) 40 percent, for the third plan year.

`(IV) 60 percent, for the fourth plan year.

`(V) 80 percent, for the fifth plan year.

For purposes of this clause, a defined benefit plan (as defined in section 3(35)) maintained by a contributing sponsor shall be treated as a new defined benefit plan for each of its first 5 plan years if, during the 36-month period ending on the date of the adoption of the plan, the sponsor and each member of any controlled group including the sponsor (or any predecessor of either) did not establish or maintain a plan to which this title applies with respect to which benefits were accrued for substantially the same employees as are in the new plan.'.

(b) SMALL PLANS- Paragraph (3) of section 4006(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)), as amended by section 702(b), is amended--

(1) by striking `The' in subparagraph (E)(i) and inserting `Except as provided in subparagraph (G), the', and

(2) by inserting after subparagraph (F) the following new subparagraph:

`(G)(i) In the case of an employer who has 25 or fewer employees on the first day of the plan year, the additional premium determined under subparagraph (E) for each participant shall not exceed \$5 multiplied by the number of participants in the plan as of the close of the preceding plan year.

`(ii) For purposes of clause (i), whether an employer has 25 or fewer employees on the first day of the plan year is determined taking into consideration all of the employees of all members of the contributing sponsor's controlled group. In the case of a plan maintained by two or more contributing sponsors, the employees of all contributing sponsors and their controlled groups shall be aggregated for purposes of determining whether the 25-or-fewer-employees limitation has been satisfied.'.

(c) EFFECTIVE DATES-

(1) SUBSECTION (a)- The amendments made by subsection (a) shall apply to plans

established after December 31, 2001.

(2) SUBSECTION (b)- The amendments made by subsection (b) shall apply to plan years beginning after December 31, 2001.

#### SEC. 704. AUTHORIZATION FOR PBGC TO PAY INTEREST ON PREMIUM OVERPAYMENT REFUNDS.

(a) IN GENERAL- Section 4007(b) of the Employment Retirement Income Security Act of 1974 (29 U.S.C. 1307(b)) is amended--

(1) by striking `(b)' and inserting `(b)(1)', and

(2) by inserting at the end the following new paragraph:

“(2) The corporation is authorized to pay, subject to regulations prescribed by the corporation, interest on the

amount of any overpayment of premium refunded to a designated payor. Interest under this paragraph shall be calculated at the same rate and in the same manner as interest is calculated for underpayments under paragraph (1).”.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply to interest accruing for periods beginning not earlier than the date of the enactment of this Act.

#### SEC. 705. SUBSTANTIAL OWNER BENEFITS IN TERMINATED PLANS.

(a) MODIFICATION OF PHASE-IN OF GUARANTEE- Section 4022(b)(5) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1322(b)(5)) is amended to read as follows:

“(5)(A) For purposes of this paragraph, the term `majority owner' means an individual who, at any time during the 60-month period ending on the date the determination is being made--

“(i) owns the entire interest in an unincorporated trade or business,

“(ii) in the case of a partnership, is a partner who owns, directly or indirectly, 50 percent or more of either the capital interest or the profits interest in such partnership, or

“(iii) in the case of a corporation, owns, directly or indirectly, 50 percent or more in value of either the voting stock of that corporation or all the stock of that corporation.

For purposes of clause (iii), the constructive ownership rules of section 1563(e) of the Internal Revenue Code of 1986 shall apply (determined without regard to section

1563(e)(3)(C)).

`(B) In the case of a participant who is a majority owner, the amount of benefits guaranteed under this section shall equal the product of--

`(i) a fraction (not to exceed 1) the numerator of which is the number of years from the later of the effective date or the adoption date of the plan to the termination date, and the denominator of which is 10, and

`(ii) the amount of benefits that would be guaranteed under this section if the participant were not a majority owner.'.

(b) MODIFICATION OF ALLOCATION OF ASSETS-

(1) Section 4044(a)(4)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1344(a)(4)(B)) is amended by striking `section 4022(b)(5)' and inserting `section 4022(b)(5)(B)'.

(2) Section 4044(b) of such Act (29 U.S.C. 1344(b)) is amended--

(A) by striking `(5)' in paragraph (2) and inserting `(4), (5)', and

(B) by redesignating paragraphs (3) through (6) as paragraphs (4) through (7), respectively, and by inserting after paragraph (2) the following new paragraph:

`(3) If assets available for allocation under paragraph (4) of subsection (a) are insufficient to satisfy in full the benefits of all individuals who are described in that paragraph, the assets shall be allocated first to benefits described in subparagraph (A) of that paragraph. Any remaining assets shall then be allocated to benefits described in subparagraph (B) of that paragraph. If assets allocated to such subparagraph (B) are insufficient to satisfy in full the benefits described in that subparagraph, the assets shall be allocated pro rata among individuals on the basis of the present value (as of the termination date) of their respective benefits described in that subparagraph.'.

(c) CONFORMING AMENDMENTS-

(1) Section 4021 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1321) is amended--

(A) in subsection (b)(9), by striking `as defined in section 4022(b)(6)', and

(B) by adding at the end the following new subsection:

`(d) For purposes of subsection (b)(9), the term `substantial owner' means an individual who, at any time during the 60-month period ending on the date the determination is being made--

`(1) owns the entire interest in an unincorporated trade or business,

`(2) in the case of a partnership, is a partner who owns, directly or indirectly, more than 10 percent of either the capital interest or the profits interest in such partnership, or

`(3) in the case of a corporation, owns, directly or indirectly, more than 10 percent in value of either the voting stock of that corporation or all the stock of that corporation.

For purposes of paragraph (3), the constructive ownership rules of section 1563(e) of the Internal Revenue Code of 1986 shall apply (determined without regard to section 1563(e)(3)(C)).'

(2) Section 4043(c)(7) of such Act (29 U.S.C. 1343(c)(7)) is amended by striking `section 4022(b)(6)' and inserting `section 4021(d)'.

(d) EFFECTIVE DATES-

(1) IN GENERAL- Except as provided in paragraph (2), the amendments made by this section shall apply to plan terminations--

(A) under section 4041(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1341(c)) with respect to which notices of intent to terminate are provided under section 4041(a)(2) of such Act (29 U.S.C. 1341(a)(2)) after December 31, 2001, and

(B) under section 4042 of such Act (29 U.S.C. 1342) with respect to which proceedings are instituted by the corporation after such date.

(2) CONFORMING AMENDMENTS- The amendments made by subsection (c) shall take effect on January 1, 2002.

SEC. 706. CIVIL PENALTIES FOR BREACH OF FIDUCIARY RESPONSIBILITY.

(a) IMPOSITION AND AMOUNT OF PENALTY MADE DISCRETIONARY- Section 502(l)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(l)(1)) is amended--

(1) by striking `shall' and inserting `may', and

(2) by striking `equal to' and inserting `not greater than'.

(b) APPLICABLE RECOVERY AMOUNT- Section 502(l)(2) of such Act (29 U.S.C. 1132(l)(2)) is amended to read as follows:

`(2) For purposes of paragraph (1), the term `applicable recovery amount' means any amount which is recovered from any fiduciary or other person (or from any other person on behalf of any such fiduciary or other person) with respect to a breach or violation described in paragraph (1) on or after the 30th day following receipt by such fiduciary or other person of written notice from the Secretary of the violation, whether paid voluntarily or by order of a court in a judicial proceeding instituted by the Secretary under subsection (a)(2) or (a)(5). The Secretary may, in the Secretary's sole discretion, extend the 30-day period described in the preceding sentence.'

(c) OTHER RULES- Section 502(l) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(l)) is amended by adding at the end the following new paragraph:

`(5) A person shall be jointly and severally liable for the penalty described in paragraph (1) to the same extent that such person is jointly and severally liable for the applicable recovery amount on which the penalty is based.

`(6) No penalty shall be assessed under this subsection unless the person against whom the penalty is assessed is given notice and opportunity for a hearing with respect to the violation and applicable recovery amount.'

(d) EFFECTIVE DATES-

(1) IN GENERAL- The amendments made by this section shall apply to any breach of fiduciary responsibility or other violation of part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 occurring on or after the date of enactment of this Act.

(2) TRANSITION RULE- In applying the amendment made by subsection (b) (relating to applicable recovery amount), a breach or other violation occurring before the date of enactment of this Act which continues after the 180th day after such date (and which may have been discontinued at any time during its existence) shall be treated as having occurred after such date of enactment.

## SEC. 707. BENEFIT SUSPENSION NOTICE.

(a) MODIFICATION OF REGULATION- The Secretary of Labor shall modify the regulation under section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(a)(3)(B)) to provide that the notification required by such regulation--

(1) in the case of an employee who returns to work for a former employer after commencement of payment of benefits under the plan shall--

(A) be made during the first calendar month or payroll period in which the plan withholds payments, and

(B) if a reduced rate of future benefit accruals will apply to the returning employee (as of the first date of participation in the plan by the employee after returning to work), include a statement that the rate of future benefit accruals will be reduced, and

(2) in the case of any employee who is not described in paragraph (1)--

(A) may be included in the summary plan description for the plan furnished in accordance with section 104(b) of such Act (29 U.S.C. 1024(b)), rather than in a separate notice, and

(B) need not include a copy of the relevant plan provisions.

(b) EFFECTIVE DATE- The modification made under this section shall apply to plan years beginning after December 31, 2001.

#### TITLE VIII--PLAN AMENDMENTS

#### SEC. 801. PROVISIONS RELATING TO PLAN AMENDMENTS.

(a) IN GENERAL- If this section applies to any plan or contract amendment--

(1) such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subsection (b)(2)(A); and

(2) except as provided by the Secretary of the Treasury, such plan shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 or section 204(g) of the Employee Retirement Income Security Act of 1974 by reason of such amendment.

(b) AMENDMENTS TO WHICH SECTION APPLIES-

(1) IN GENERAL- This section shall apply to any amendment to any plan or annuity contract which is made--

(A) pursuant to any amendment made by this Act, or pursuant to any regulation issued under this Act; and

(B) on or before the last day of the first plan year beginning on or after January 1, 2004.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this paragraph shall be applied by substituting '2006' for '2004'.

(2) CONDITIONS- This section shall not apply to any amendment unless--

(A) during the period--

(i) beginning on the date the legislative or regulatory amendment described in paragraph (1)(A) takes effect (or in the case of a plan or contract amendment not required by such legislative or regulatory amendment, the effective date specified by the plan); and

(ii) ending on the date described in paragraph (1)(B) (or, if earlier, the date the plan or contract amendment is adopted),

the plan or contract is operated as if such plan or contract amendment were in effect; and

(B) such plan or contract amendment applies retroactively for such period.

END